

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 52

THE UNITED STATES OF AMERICA AND INTERSTATE
COMMERCE COMMISSION, APPELLANTS

vs.

N. E. ROSENBLUM TRUCK LINES, INC.

No. 53

THE UNITED STATES OF AMERICA AND INTERSTATE
COMMERCE COMMISSION, APPELLANTS

vs.

E. B. MARGOLIES, AN INDIVIDUAL DOING BUSINESS
AS MANHATTAN TRUCK LINES

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF MISSOURI

FILED APRIL 21, 1941

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INDEX

	Original Print	
Record from D. C. U. S., Eastern District of Missouri, Case of N. E. Rosenblum Truck Lines, Inc. vs. United States, et al.	1	1
Citation and service [omitted in printing].....	1	1
Petition (as amended).....	5	1
Exhibit A—Report of I. C. C., Docket No. MC-13853.	11	5
Order convening three judge court.....	18	11
Docket entry showing hearing and order granting tem- porary stay, etc. [omitted in printing].....	20	
Amendment to petition [omitted in printing]	21	
Answer of Interstate Commerce Commission.....	22	12
Answer of United States of America.....	27	14
Docket entry showing final hearing of cause on its merits [omitted in printing].....	29	
Opinion of the Court.....	31	15
Findings of fact and conclusions of law.....	39	20

Record—Continued.

	Original	Print
Final decree and judgment.....	44	22
Petition for appeal [omitted in printing].....	47	
Assignments of error.....	49	24
Order allowing appeal.....	52	25
Notice of appeal to Attorney General of State of Missouri [omitted in printing].....	55	
Præcipe for transcript of record.....	58	26
Clerk's certificate [omitted in printing].....	60	
Record from D. C. II, S., Eastern District of Missouri, Case of J. B. Margolies v. United States et al.....	61	
Citation and service [omitted in printing].....	61	
Petition (as amended).....	65	28
Exhibit A—Report of I. C. C., Docket No. M. C. 36692 (copy) [omitted in printing].....	70	
Order convening three-judge court.....	77	32
Docket entry showing hearing and order granting tempo- ary stay, etc [omitted in printing].....	79	
Amendment to petition [omitted in printing].....	80	
Answer of Interstate Commerce Commission.....	81	33
Answer of United States of America.....	86	35
Docket entry showing final hearing of cause on its merits [omitted in printing].....	88	
Opinion of the Court (copy) [omitted in printing].....	90	
Findings of fact and conclusions of law.....	98	36
Final decree and judgment.....	103	39
Petition for appeal [omitted in printing].....	106	
Assignments of error.....	108	40
Order allowing appeal.....	111	42
Notice of appeal to Attorney General of State of Mis- souri [omitted in printing].....	114	
Præcipe for transcript of record.....	117	43
Clerk's certificate [omitted in printing].....	120	
Proceedings before Interstate Commerce Commission in N. E. Rosenblum Truck Lines, Inc. Contract Carrier Application, No. MC13853.....	121	45
Transcript of hearing before Examiner Woodrow at St. Louis, Missouri, Dec. 4th and 5th, 1936.....	121	45
Caption and appearances.....	121	45
Colloquy.....	124	46
Testimony of N. E. Rosenblum.....	129	48
Colloquy.....	178	77
Applicant's exhibit No. 1—Receipted bill for Chevro- let truck.....	180-A	78
Applicant's exhibit No. 2—Certificate of title of a motor vehicle.....	180-B	79
Applicant's exhibit No. 3—Bill of sale for Chevrolet truck.....	180-C	80

INDEX

III

Proceedings—Continued.

Transcript of hearing—Continued.

Original Print

Applicant's exhibit No. 4—Certificate of title of a motor vehicle.....	180-D	80
Applicant's exhibit No. 5—Cover sheet of minimum rate tariff schedule dated March 23, 1936, issued by N. E. Rosenblum.....	181	82
Applicant's exhibit No. 6—Freight bills.....	182	82
Recommended report and order of Examiner Woodrow, served August 9, 1937.....	183-A	86
Transcript of hearing before Examiner Angle at St. Louis, Missouri, Nov. 28, 1938.....	184	94
Caption and appearances.....	184	94
Colloquy.....	185	95
Testimony of—		
J. M. Harty.....	190	97
K. H. Grant.....	204	105
Joseph Pazderka, Jr.....	206	106
John P. Anderson.....	207	107
George R. Goode.....	208	107
William Shandalov.....	213	110
N. E. Rosenblum.....	323	173
Lee Andrews.....	356	191
Frank Chervitz.....	364	196
Colloquy.....	375	201
Order granting application for substitution of applicant.....	379	203
Order denying applications for contract carrier certificate.....	380	204
Order denying petitions for reconsideration.....	381	205
Proceedings before Interstate Commerce Commission in Jacob B. Margolies Contract Carrier Application, No. MC-36692.....	384	205
Transcript of hearing before Joint Board No. 135 at Chicago, Illinois, Dec. 1, 1936.....	384	205
Caption and appearances.....	384	206
Colloquy.....	386	
Testimony of—		
Truman E. Baulos.....	391	209
George R. Goode.....	440	236
Truman E. Baulos (recalled).....	465	250
George R. Goode (recalled).....	469	252
Applicant's exhibits:		
No. 1—Invoice, Herman Body Co. to T. E. Baulos, April 10, 1934.....	472(1)	253
No. 2—Same, June 12, 1934.....	472(2)	254
No. 3—Same, June 25, 1935.....	472(3)	255
No. 4—Contract between T. E. Baulos and Swift & Co., Sept. 17, 1934.....	472(4)	256
No. 5—Contract between T. E. Baulos and Libby, McNeill & Libby, March 5, 1935.....	472-11	263

Proceedings--Continued.

Transcript of hearing--Continued.	Original	Print
Intervener's exhibits:		
No. 6--Letter, T. E. Baulos to Be-Mac Transport Co., Feb. 24, 1936	472(14)	266
No. 7--Statements, Be Mac Co. to Baulos.....	472(15)	267
No. 8--Cancelled checks.....	472(20)	269
No. 9--Statements of T. E. Baulos--Account of trucks Nos. 2 and 6.....	472(34)	270
No. 10--Statements of T. E. Baulos--Account of trucks Nos. 1 and 7.....	472(55)	284
No. 11--Statements of T. E. Baulos--Account of truck No. 13.....	472(75)	293
Transcript of hearing before Joint Board No. 135 at St. Louis, Missouri, Nov. 28, 1938.....	473	297
Caption and appearances.....	473	297
Colloquy.....	474	297
Order granting application for substitution of applicant..	481	301
Statement of points to be relied upon.....	482	302
Stipulation as to printing of record.....	487	303

5 In United States District Court for the Eastern Division
of the Eastern Judicial District of Missouri

N. E. ROSENBLUM TRUCK LINES INC., A CORPORATION, PLAINTIFF
vs.

UNITED STATES OF AMERICA AND THE INTERSTATE COMMERCE
COMMISSION, DEFENDANTS

*Petition to review, enjoin, suspend, and set aside an order of the
Interstate Commerce Commission*

Filed October 8, 1940

(As amended by interlineation Oct. 12, 1940)

1. Plaintiff is a corporation duly organized under the laws of Missouri, and is a resident of St. Louis, Missouri, and is engaged in business as a contract carrier of freight by motor vehicle between the cities of St. Louis, Missouri, and Chicago, Illinois, and intermediate points.

2. Plaintiff is successor in interest to N. E. Rosenblum, an individual heretofore doing business as N. E. Rosenblum Truck Lines, and plaintiff and its said predecessor in interest were on and before July 1, 1935, and since said time have been continuously engaged in bona fide operation as a contract carrier by motor vehicle within the meaning, purpose and intent of Section 209 of the Motor Carrier Act of 1935, now the Transportation Act of 1940 (49 U. S. C. A., Section 309).

3. This action is brought under and by virtue of the provisions of Section 205 (g) of the Transportation Act of 1940 and Sections 24 and 209 of the Judicial Code (28 U. S. C. A., Sections 41, 43, 44, and 45), and has for its purpose enjoining, suspending, and setting aside of an order of the Interstate Commerce Commission, in a proceeding entitled MC-13853, N. E. Rosenblum,

Contract Carrier Application, as hereinafter more fully
6 appears, and, hence, is within the jurisdiction confided to this court by the law herein mentioned.

4. February 11, 1936, plaintiff's predecessor in interest herebefore named filed with the Interstate Commerce Commission its application for a certificate or a permit authorizing continuance of operations as a contract carrier by motor vehicle of general commodities in interstate commerce between St. Louis, Missouri, and Chicago, Illinois, and various intermediate points, over fifteen specified routes, as provided by Section 209 of the Motor Carrier Act of 1935 (49 U. S. C. A., Section 309).

5. Thereafter said application was referred by the Interstate Commerce Commission, hereinafter called the Commission, to F. W. McM. Woodrow, an examiner. The applicant, this plaintiff, appeared before said examiner, as did certain protestants who opposed the application, and after a hearing, the taking of evidence and consideration of briefs, said examiner filed his report and recommended order with Division No. 5 of the Commission, whereby it was concluded that plaintiff was entitled to the issuance of said certificate under the provisions of Section 209 of said Motor Carrier Act as a carrier who was in bona fide operation as a contract carrier by motor vehicle on July 1, 1935, and continuously thereafter, and said examiner, by his report, recommended that an order be made granting said permit to plaintiff.

6. Thereafter, on application of the protestants therein, a further hearing on plaintiff's application was had before H. W. Angle, an examiner to whom the proceedings had theretofore been reassigned, at which hearing additional testimony was received and briefs considered by Examiner Angle, who thereafter filed his report and recommended order by which he concluded that plaintiff was not entitled to the issuance of said permit and recommended that said application be denied.

7. Thereafter and on December 19, 1939, said proceeding was set for further hearing by oral argument before Division 5 of the Commission, at which the parties appeared before Commissioners Lee, Rogers, and Eastman, sitting and acting as Division 5 and said proceeding, the reports and recommendations of Examiner Woodrow and Angle, and the evidence and argument of parties was further heard and considered.

8. July 1, 1940, said Division 5, acting by and through Commissioners Rogers and Alldredge, rendered a decision and opinion in writing holding that the applicant, this plaintiff, was not in bona fide operation as a contract carrier by motor vehicle on July 1, 1935, and hence is not entitled to said permit under the provisions of Section 209 of the Motor Carrier Act; and denied said application. Commissioner Lee, one of the commissioners and chairman of Division 5, prepared and filed a dissenting opinion by which he concluded that plaintiff was bona fide in operation as a contract carrier by motor vehicle on July 1, 1935, and hence is entitled to the issuance of said permit, and that the permit should be granted.

The order and opinion of Commissioners Rogers and Alldredge as a majority of Division 5 and the dissenting opinion of Chairman and Commissioner Lee are full set out in Exhibit A, which is attached hereto and by this reference made a part hereof.

9. Thereafter plaintiff filed its petition for reconsideration of said order of Division No. 5 and for rehearing on the plaintiff's

application for permit, which said petition was overruled and denied by the Commission on October 2, 1940, and plaintiff as said applicant has now exhausted the remedies afforded plaintiff by law in the proceeding before the Commission.

10. The said order of Division No. 5 denying to plaintiff a permit, by the terms of said order, becomes effective, unless
8 suspended or set aside by this court, on October 12, 1940, at which time, if said order remains in full force and effect, plaintiff's right to continue and pursue its business as contract carrier will expire because of said order.

11. If said order remains in force and effect beyond said October 12, 1940, plaintiff will be obliged to discontinue its business and to refuse to accept for shipment or to carry the commodities which it is under contract to carry for divers and sundry shippers now using plaintiff's vehicles, service, and equipment; and as a result of said enforced cessation of operation plaintiff's business will be totally destroyed, its good will lost, its contracts with shippers forfeited or invalidated by its enforced default, and its employees deprived of employment.

12. The decision and ruling of Division No. 5, acting through Commissioners Rogers and Alldredge, in the light of the undisputed facts shown in evidence at the hearings before the examiners, is erroneous in law in that it denies to plaintiff the right to a permit provided by Section 209 of the Motor Carrier Act.

Said decision and ruling is erroneous in law as shown upon its face in that it denies to plaintiff a permit although the facts stated in said opinion show that in law plaintiff is entitled to said permit.

Said decision is erroneous in law as shown by the dissenting opinion of Chairman and Commissioner Lee of Division No. 5 of the Commission.

The undisputed facts proven in evidence at the hearings before the examiners, and the conclusions of fact stated in the ruling and decision, show clearly that in law the plaintiff and its predecessor have been continuously and bona fide in operation as a contract carrier by motor vehicle since 1934 over the routes and within the territory for which application was made, and, hence, is entitled to the permit prayed under the provisions of Section 209 of said act.

9 There was no substantial evidence before the Commission to support the following conclusion in the decision of the Commission:

"It is clear from the record, and we so conclude, that applicants' equipment prior to February 1936, was operated solely under the direction and control of the common carriers and under the latter's responsibility to the general public and to the shippers."

but the undisputed evidence shows said conclusion to be erroneous; and said conclusion, without evidentiary support, is arbitrary and capricious.

13. Unless said decision and ruling are suspended and set aside and the Commission is enjoined from enforcing the same, plaintiff will suffer great and irreparable injury and its business will be destroyed and the business of the shippers whom it serves will suffer great inconvenience and injury.

14. Unless this court shall by an interlocutory order enjoin and restrain the enforcement of said decision and ruling pending final determination of this action, plaintiff will in effect and for all practical purposes be denied the right to a judicial review of said ruling and decision, since cessation of plaintiff's business for a single day would result in its total destruction, and thus plaintiff's rights under the law would be denied it; and this court should, to protect its jurisdiction herein, as well as plaintiff's right to judicial review of the order, suspend said order pending final judgment herein.

Wherefore, plaintiff prays as follows:

1. That notice and summons be issued herein to the defendants and served upon the United States and the Interstate Commerce Commission as required by law;

2. That the judge of this court immediately call to his assistance herein two additional judges as required by Section 208 of the Judicial Code (28 U. S. C. A. 47), that a hearing be had on or before October 12, 1940, and, on consideration of the premises, an interlocutory order be made and issued suspending said order and restraining the enforcement thereof pending final determination of this action.

3. That the action and proceeding before the Interstate Commerce Commission heretofore mentioned and described, as well as the ruling and decision of Division No. 5 thereof, be reviewed and considered; that upon consideration thereof said ruling and decision be annulled and its enforcement forbidden and enjoined;

10 that the errors of law in said ruling and decision be corrected and the Interstate Commerce Commission be directed and enjoined to grant to plaintiff the certificate or permit to which in law the record in said proceeding shows plaintiff to be entitled.

4. That the court make such other orders from time to time as in the premises as the protection and enforcement of plaintiff's rights herein require.

M. E. ARONOFF,

GUS O. NATIONS,

Attorneys for Plaintiff.

[Duly sworn to by M. E. Aronoff; jurat omitted in printing.]

M-4848

INTERSTATE COMMERCE COMMISSIONNo. MC-13853¹**N. E. ROSENBLUM TRUCK LINES, INC.,
CONTRACT CARRIER APPLICATION***Submitted December 19, 1939. Decided July 1, 1940*

Applicants found to have failed to establish their right to a certificate of public convenience and necessity or a permit under the "grandfather" clause of section 206 (a) or 209 (a) of the Motor Carrier Act, 1935. Applications denied.

Meyer E. Aronoff, C. E. Conner, and Joseph C. Hopewell for applicants.

B. W. LaTourette, J. H. Miller, M. G. Roberts, William W. Dalton, R. J. Williams, George W. Holmes, Kenneth Teasdale, A. F. Versen, E. G. Minor, David Axelrod, J. H. Wright, and Harry M. Slater for protestants.

Edwin B. Levy for intervener.

REPORT OF THE COMMISSION

DIVISION 5, COMMISSIONERS LEE, ROGERS, AND ALDREDGE

BY DIVISION 5:

Exceptions were filed by protestants to the separate recommended orders of the examiners, and the parties in No. MC-13853 were heard in oral argument. On petition of protestants, we reopened both proceedings for further hearing. Applicants thereafter filed exceptions to the recommended orders on further hearing of the examiner in the title case and of joint board No. 135 in No. MC-36692. We again heard the parties in oral argument in the title case and denied a request for oral argument in No. MC-36692. As to the issues presented are identical, we will dispose of both cases in one report.

By application² filed February 11, 1936, as amended at the hearing, N. E. Rosenblum Truck Lines, Inc.,³ of St. Louis, Mo., successor in interest to N. E. Rosenblum, doing business as N. E. Rosenblum Truck Lines, seeks a certificate of public convenience and necessity, or a permit, authorizing continuance of opera-

¹ This report also embraces No. MC-36692, Jacob B. Margolies (Successor in Interest to Truman E. Baulos) Contract Carrier Application.

² Under the "grandfather" clauses of sections 206 (a) and 209 (a) of the Motor Carrier Act, 1935.

³ The substitution of N. E. Rosenblum Truck Lines, Inc., for N. E. Rosenblum was approved February 9, 1939, in No. MC-FC-11278.

12 tions as a common or a contract carrier by motor vehicle of general commodities, in interstate or foreign commerce, between St. Louis, Mo., and Chicago, Ill., over 15 specified routes.

By application,² in No. MC-36692, filed February 10, 1936, as amended, Jacob B. Margolies,³ doing business as Manhattan Truck Lines, of St. Louis, Mo., as successor in interest to Truman E. Baulos, seeks a certificate of public convenience and necessity, or a permit, authorizing continuance of operations as a common or a contract carrier by motor vehicle, of general commodities, in interstate or foreign commerce, between St. Louis and Chicago, over three specified routes.

St. Louis-San Francisco Railway Company, Southwestern Freight Bureau, Illinois Central Railroad Company, Missouri Pacific Railroad Company, Illinois Freight Association, Central States Motor Freight Bureau, Inc., and numerous motor carriers⁴ opposed the applications. Raymond Lee Dance doing business as R. L. Dance Truck Company, was permitted to intervene in No. MC-13853 and participated in the first oral argument in that case, but he has taken no further part in the proceedings.

At the further hearings, applicants objected to the introduction of evidence exceeding the scope of that outlined in protestant's petitions for reopening and further hearing. Our order reopened the proceedings "for further hearing" generally and did not by its terms limit the scope of the further hearing. The proceedings having been reopened for all purposes, the evidence received at the further hearings, insofar as relevant to the issues of the entire proceedings, was properly admitted.

No. MC-13853.—N. E. Rosenblum commenced operations with one tractor-trailer unit in 1934. A second unit was acquired in October 1934, and in June 1935 a third unit was leased and put into service. From the inception of his operations until February 1936 applicant hauled only for "reputable" truckers, between St. Louis and Chicago, for which he was paid a lump sum per trip on dock-to-dock movements. During this period his operations were performed principally for Transamerican Freight Lines, Inc., hereinafter called Transamerican, a com-

² Under the "grandfather" clauses of sections 206 (a) and 209 (a) of the Motor Carrier Act, 1935.

³ Substitution of Jacob B. Margolies, doing business as Manhattan Truck Lines, for Truman E. Baulos was approved February 10, 1939, in No. MC-FC-11232.

⁴ Anderson Motor Service Company, Be Mac Transport Company, Inc., Brashear Freight Lines, Chicago-St. Louis Transfer Company, Consolidated Forwarding Company, Inc., Decatur Cartage Company, Highway Merchandise Carriers, Inc., Humann-Roper Freight Lines, Mound City Forwarding Company, Nighthawk Freight Service, Peoria Cartage Company, Plaza Express Company, St. Louis Forwarding Company, Viking Freight Company, Inc., Transamerican Freight Lines, Inc., Toedeltosh Transfer, Inc., Western Trucking Company, Inc., and Hayes Transfer and Storage Company.

mon carrier operating a large number of units in this
13 territory. Rosenblum testified that he also hauled for a
number of other common carriers, most of whom are
protestants herein, although representatives of certain of those
protestants testified that their records indicated that they had
never used Rosenblum's services. It was not shown that the
arrangements with the other carriers differed from those herein
discussed.

In conducting the described operation, applicant protected his
equipment by carrying fire, theft, and collision insurance in his
own name, while cargo, public-liability, property-damage, and
like insurance for the protection of the general and shipping
public were carried by Transamerican or other common carriers
for which he was working. In some instances, the cost of the
latter types of insurance was charged to Rosenblum, and on oc-
casions small cargo-damage claims were charged to him by the
carrier. While drivers of the trucks were employees of Rosen-
blum, Transamerican directed the routes generally to be followed
by the drivers, required them to "sign in" at registration stations
along the route, and directed their departure and time of arrival
at destination. Witness for Transamerican testified that the
drivers were required to be acceptable to it, and in one instance
when a driver was intoxicated it refused to permit him to trans-
port one of its loads.

A representative of Transamerican testified that his concern,
as well as other large motor common carriers, are frequently
called upon to obtain extra trucks when traffic is heavy, and that
in such instances it employs the services of equipment belonging
to individuals, such as Rosenblum and Baulos (original applicant
in No. MC-36692). He stated that all such traffic is solicited
by his company and moves between its terminals. Collection
and delivery service is rendered by Transamerican from its ter-
minals, except that where a full truckload is available at St.
Louis, applicant would load at the shipper's dock, but in such
instances the driver of the hired equipment is replaced by one
of its own drivers at Chicago for delivery to consignee, as re-
quired by its union contract. Transamerican assumes the full
responsibility for the shipment from consignor to consignee.
Subsequently to February 1936 applicant began hauling for indi-
vidual shippers in his own right.

No. MC-36692.—In March 1934 Truman E. Baulos was em-
ployed as office manager and dispatcher of E. H. Hoffmann Lines,
Incorporated, hereinafter referred to as Hoffman, a motor carrier
operating between St. Louis and Chicago. During that same
month Baulos acquired a tractor-trailer unit and commenced

transporting freight for Hoffmann between St. Louis and Chicago at a truckload price per trip under arrangements similar to those in existence between Rosenblum and Transamerica described above. Prior to July 1, 1935, two additional units were acquired and put into similar service for Hoffmann and other common carriers operating between these points.

Baulos submitted in evidence copies of written contracts between himself and Swift & Company, dated September 1934, and with Libby, McNeill & Libby, dated March 1935, providing for the transportation of various commodities. Although the contracts were in Baulos' name, freight moving thereunder was transported on the billing of Hoffmann and the shippers paid the latter for the services rendered. Baulos was paid on a trip basis in the same manner as previously described. No explanation was made as to why the transportation was performed in this manner, applicant merely stating that the traffic "cleared" through Hoffmann. However, in view of the fact that Baulos was an employee of Hoffmann at the time and does not contend that he performed any independent operations directly for shippers prior to February 1936, we presume that Baulos was merely acting as an agent of Hoffmann with respect to these contracts. The arrangement with Hoffmann continued until October 1935, when applicant was employed by Be-Mac Transport Company, Inc., as its Chicago office manager, on a salary basis. He thereafter operated his vehicles for Be-Mac until February 1936, under the same arrangements as were previously in force with Hoffmann.

In February 1936, Baulos and Rosenblum associated themselves with one William Shandalov, who operated a truck freight terminal at St. Louis in the name of Over Nite Freight Service. Shandalov filed an application under the "grandfather" clauses of sections 206 (a) and 209 (a) of the act, in No. MC-74145, covering the same scope of operations as that of Rosenblum. The latter application was denied in Shandalov Common Carrier Application, 3 M. C. C. 409. That proceeding was subsequently reopened and the application dismissed at the request of applicant, effective March 1, 1939. Following their association with Shandalov, in February 1936, Baulos and Rosenblum commenced transporting directly for the shipping public under individual contracts. Owing to financial difficulties and disagreement between the parties, their association was severed in March 1938.

Protestants contend that during their association the three individuals operated as a partnership and that, as Shandalov

was a common carrier, dual operations as both common and contract carriers were conducted by the partnership in contravention of the provisions of section 210 of the act. During the period in question, the cost of operating the terminal was divided pro rata between the three individuals, and some items of expense, such as license plates and insurance, were advanced by Shandalov and deducted from the earnings of the individuals. This and other evidence tends to show that a partnership relationship might have existed, but much of the evidence is conflicting on this point. In any event, it was not shown that Baulos or Rosenblum discontinued operating as contract carriers in their own right during this period, and in the absence of such a showing we make no finding with respect to the partnership. We therefore need not discuss protestants' contentions with respect to dual operations.

Discussion.—Applicants contend that the operations which they were conducting on the statutory date and until February 1936, although performed exclusively for motor common carriers, were those of contract carriers by motor vehicle as defined in section 203 (a) (15) of the act. Protestants, on the other hand, contend that the operations prior to February 1936 were those of "owner-operators" and that applicants are not entitled to either certificates or permits by reason thereof. In *Dixie Ohio Exp. Co. Common Carrier Application*, 17 M. C. C. 735, division 5 gave consideration to the question of so-called owner-operators and said, at page 740 therein:

"If the vehicles of the owner-operators, while being used by applicant, were operated under its direction and control, and under its responsibility to the general public as well as to the shipper, then its operations, in which such vehicles were employed, come within the phrase 'or by a lease or any other arrangement' of section 203 (a) (14), and applicant, as to such operations, was a common carrier by motor vehicle. The traffic transported in the vehicles of the owner-operators moved under bills of lading issued by applicant. The vehicles, while in applicant's service, were registered under applicant's operating authority and had applicant's name painted, or otherwise shown, thereon. Insurance covering them was arranged and paid for by applicant. Applicant's dispatchers or other employees directed the time and manner of the loading and unloading of the vehicles and also directed their movement over applicant's routes. We conclude that they were operated under applicant's direction and control and under its responsibility to the general public as well as to the shipper, and that applicant, as to its operations in which such

vehicles were employed, was a common carrier by motor vehicle as defined in section 203 (a) (14)."

Although the agreements between applicants and the common carriers were not reduced to written "leases" and the record is silent as to whether the trucks bore the name of the common carrier when operated in its behalf and in whose name the vehicles were registered with the State authorities, nevertheless the facts in the instant case are otherwise in accord with those in the cited case. It is clear from the record, and we so conclude,

that applicants' equipment prior to February 1936 was operated solely under the direction and control of the common carriers and under the latter's responsibility to the general public and to the shippers. As to such operations, applicants do not qualify as carriers by motor vehicle within the meaning of the act and are consequently not entitled to a certificate or a permit under the "grandfather" clause of section 206 (a) or 209 (a) thereof. Dixon Contract Carrier Application, 21 M. C. C. 617. It follows that their operations since February 1936 have been unlawful extensions of operations commenced subsequent to the effective date of the act, which should be discontinued.

We find that applicants have failed to show that they were in bona fide operation as common or contract carriers by motor vehicle on June 1 or July 1, 1935, respectively; and that the applications should be denied.

An appropriate order will be entered.

LEE, Commissioner, dissenting:

It was the intention of Congress that authority issued under the "grandfather" clauses of sections 206 (a) and 209 (a) should go to the persons who actually conducted the motor-carrier operations and not to those who merely arranged for, or provided, transportation in vehicles operated under the direction, control, and responsibility of others. See Dixie Ohio Exp. Co. Common Carrier Application, 17 M. C. C. 735, and Acme Fast Freight, Inc., Common Carrier Application, 8 M. C. C. 211.

These applicants have been continuously engaged in transportation of property by motor vehicle for hire since 1934, and, in my opinion, the evidence does not show that their vehicles were operated under the direction and control of the other carriers, who, during certain periods, turned over traffic to them for transportation. I would grant authority to applicants.

18 IN UNITED STATES DISTRICT COURT FOR THE EASTERN DIVISION
OF THE EASTERN JUDICIAL DISTRICT OF MISSOURI

N. E. ROSENBLUM TRUCK LINES, INC., A CORPORATION, PLAINTIFF

vs.

UNITED STATES OF AMERICA AND THE INTERSTATE COMMERCE
COMMISSION, DEFENDANTS

Order concerning three-judge court

Filed Oct. 9, 1940

Now this day comes the above-named plaintiff by its attorneys and exhibits and presents to the court the complaint heretofore filed in this case. And, it appearing from said complaint that the action herein is begun and prosecuted under Sections 24, 208, and 209 of the Judicial Code (28 U. S. C. A. 41, 43, 44, 45, 46, and 47) to review, enjoin, suspend and set aside an order of the Interstate Commerce Commission, and pursuant to the said provisions of law governing such matters this case should be heard and determined by a court of three judges, one of whom should be a Circuit Judge, it is therefore

Ordered that the Hon. Joseph W. Woodrough, Judge of the Circuit Court of Appeals of the Eighth Judicial Circuit, and the Hon. George H. Moore, Judge of the District Court for the Eastern District of Missouri are called and requested to assist me at the hearing of said case and particularly on the hearing on the prayer for an interlocutory injunction and the allowance of a temporary stay or suspension of the order of the Interstate

Commerce Commission referred to in said complaint,
19 which said hearing is set and docketed in Room No. 1 of
the New Federal Building, 12th and Market Streets, St.
Louis, Missouri, at 10:00 A. M. October 12th, 1940.

Done this 9th day of October, 1940.

CHARLES B. DAVIS,
District Judge.

12 UNITED STATES VS. N. E. ROSENBLUM TRUCK LINES ET AL.

22 In District Court of the United States for the Eastern District of Missouri, Eastern Division

Civil Action File No: 599—Court No. 1

N. E. ROSENBLUM TRUCK LINES, INC., A CORPORATION, PLAINTIFF
vs.

UNITED STATES OF AMERICA AND THE INTERSTATE COMMERCE
COMMISSION, DEFENDANTS

Answer of Interstate Commerce Commission

Filed Oct. 12, 1940

Comes now the Interstate Commerce Commission (hereinafter called the Commission) and for its answer to the petition herein as amended answers and says:

I

Answering the allegations of paragraphs 1, 3, 4, 5, 6, 7, 8, 9, and 10 of the petition, the Commission, for the purposes of this suit and for none other, admits that the facts therein stated are true.

II

Answering the allegations of paragraphs 2 and 12 of the petition, the Commission denies each of and all the allegations therein contained.

23

III

Answering the allegations of paragraphs 11, 13, and 14 of the petition, the Commission alleges and shows that the plaintiff may legally carry on its business as a common carrier by motor vehicle only during the pendency before the Commission of the application for a certificate of convenience and necessity filed by plaintiff's predecessor on February 11, 1936, as alleged in paragraph 4 of the petition, and that the pendency of said application will terminate upon the Commission's order denying the same becoming effective on October 12, 1940.

Further answering said paragraphs the Commission denies that its decision and order of July 1, 1940, will occasion any legal damage to the plaintiff and alleges and shows that any disruption or disorganization of the plaintiff's business, as alleged in said paragraphs, would arise from the provisions of the Motor Carrier Act and the operation of law and not from the action of the Com-

mission pursuant to law, and the Commission denies the allegations of said paragraphs of plaintiff's petition.

IV

Further answering the allegations of the petition, the Commission alleges and shows that in the hearings upon the application for a "grandfather" certificate in the proceeding styled "N. E. Rosenblum Truck Lines, Inc., Contract Carrier Application," No. MC 13853, full hearings were had in which all interested parties, including the plaintiff, participated; that a large volume of testimony and other evidence bearing upon the issues involved was received by the Commission, and the Commission, through its Division 5, considered and weighed carefully each fact, circumstance and condition submitted to it on behalf of the parties in said proceeding, and on July 1, 1940, made its report and order denying said application, as alleged in plaintiff's petition; that a true copy of said report is attached to plaintiff's petition as Exhibit A thereto and is officially reported in 24 Interstate Commerce Commission Motor Carrier Cases (M. C. C.), beginning on page 121; that in said report and order the Commission set out and described in detail all the proceedings by and before it in said matter, stated the substance of the evidence and in conclusion found that the petition should not be granted. For a full, true and correct statement of said proceeding and of the evidence before the Commission, the Court is respectfully referred to said report.

The Commission alleges and shows that its said report and order of July 1, 1940, were not made or entered by it either arbitrarily, unjustly, or contrary to the evidence or without evidence to support them.

The Commission further denies that in making said report and order the Commission committed any error of law or made any erroneous finding of fact; that in making said report and order the Commission acted within the authority duly conferred upon it by law and denies each of and all the allegations to the contrary contained in the petition.

25 Except as herein expressly admitted, the Commission denies the truth of each of and all the allegations contained in the petition, especially in so far as they conflict either with the allegations of this answer or with the findings, determinations, or conclusions of law or fact set out in said report and order of July 1, 1940.

All the above-stated matters and things the Commission is ready to aver, maintain and prove as this Honorable Court shall direct, and hereby prays that the petition be dismissed.

INTERSTATE COMMERCE COMMISSION,
By NELSON THOMAS,
Nelson Thomas, *Attorney.*

DANIEL W. KNOWLTON,
Chief Counsel,
Of Counsel.

27 In District Court of the United States for the
Eastern District of Missouri

Civil Action No. 599

N. E. ROSENBLUM TRUCK LINES, INC., A CORPORATION, PLAINTIFF
vs.

UNITED STATES OF AMERICA AND THE INTERSTATE COMMERCE
COMMISSION, DEFENDANTS

Answer of the United States of America

Filed Dec. 7, 1940

The defendant, United States of America :

1. Admits the allegations of paragraphs 1, 3, 4, 5, 6, 7, 8, 9, and 10.

2. Denies the allegations of paragraphs 2, 11, 12, 13, and 14.

3. Admits the allegations of all paragraphs of the complaint which correspond to the findings of the Commission contained in its report and order, or to the evidence of record before the Commission; denies those which are inconsistent therewith; and is without knowledge or information sufficient to form a belief as to the truth of all the remaining allegations not herein admitted nor denied.

FRANK COLEMAN,
Frank Coleman,

Special Assistant to the Attorney General,
Department of Justice, Washington, D. C.
Council for the United States.

THURMAN ARNOLD,
Assistant Attorney General.

HARRY C. BLANTON,
United States Attorney.

31 In District Court of the United States for the Eastern
Division of the Eastern District of Missouri

No. 599

N. E. ROSENBLUM TRUCK LINES, INC., A CORPORATION, PLAINTIFF

vs.

UNITED STATES OF AMERICA AND THE INTERSTATE COMMERCE
COMMISSION, DEFENDANTS

No. 601

J. B. MARGOLIES, AN INDIVIDUAL DOING BUSINESS AS MANHATTAN
TRUCK LINES, PLAINTIFF

vs.

UNITED STATES OF AMERICA AND THE INTERSTATE COMMERCE
COMMISSION, DEFENDANTS

Appearances: J. C. Hopewell, Esq., M. E. Aronoff, Esq., and
Gus O. Nations, Esq., attorneys for plaintiffs.

Thurman Arnold, Assistant Attorney General, Harry C. Blanton, United States Attorney, Danied W. Knowlton, Chief Counsel, Interstate Commerce Commission, Frank Coleman, Special Assistant to the Attorney General, and Nelson Thomas, Attorney, Interstate Commerce Commission, attorneys for defendants.

Before JOSEPH W. WOODBROUGH, Circuit Judge, CHARLES B. DAVIS and GEORGE H. MOORE, District Judges, on applications for injunctions.

Opinion

(Filed Jan. 14, 1941)

The complaints sought Certificates of Convenience and Necessity or Permits before the Interstate Commerce Commission on the theory that on July 1, 1935, they were operating as contract carriers by motor vehicles, within the meaning of the Motor Carrier Act, 49 U. S. C. A. 303, over the route for which application was made, and had so operated since that time.

32 The Commission denied the applications. The complainants filed separate suits in the District Court to set aside the orders of the Commission. The cases were heard by a Court composed of three judges under the Motor Carrier Act, 49 U. S. C. A. 305 (h), and the Act providing for such a Court, 28 U. S. C. A. 46. 47. The two cases were jointly argued and

briefed, and will be so treated in this opinion. However, separate findings of fact and conclusion of law are being filed herewith, to which reference is made without extended restatement.

That orders of the nature here involved are reviewable in this Court has been determined in *United States v. Maher*, 307 U. S. 148. However, the judicial function is limited to an examination of the record to ascertain whether there is a substantial basis in the evidence for the conclusion of the Commission. *Rochester Telephone Corporation v. United States*, 307 U. S. 125.

The Act provides in substance that a contract carrier must secure a permit to operate, but if such carrier or his predecessor in interest were operating on July 1, 1935, over the route for which application is made, and have so operated since that time, the Commission shall issue the permit without further proceedings. Section 309 (a). The complainants sought to avail themselves of this privilege granted by the law. The question is were they contract carriers on July 1, 1935, and have they so operated since that time.

33 The Interstate Commerce Commission held that the complainants were owner-operators, but were not contract carriers. As their conclusion is understood, it is based upon the theory that complainants merely provided trucks to common carriers, who in the course of operation had exclusive control and dominion of the same.

Smythe Contract Carrier Application, 22 M. C. C. 726, and *Dixon Contract Carrier Application*, 21 M. C. C. 617, are relied upon as supporting the orders entered in these cases. In the *Smythe* case the Commission stated the facts as follows:

"Under the terms of the lease, which is verbal, the cartage company has complete control and supervision of applicant's equipment, and directs the movement thereof, the same as if the trucks were owned by it. Such equipment is used exclusively in the service of the cartage company and is operated under its name. The upkeep and operating expenses and the drivers' wages are paid by applicant, the Cartage Company secures all traffic and pays applicant for the use of his equipment, 80 per cent of its rate for the transportation performed. All bills of lading are issued by and in the name of the Cartage Company, which collects the transportation charges, is liable for loss and damage claims, and provides and pays for all insurance and State License tags or fees assessable in any States in which the vehicle is operated. All transactions with shippers are carried on in the name of the cartage company."

On this state of facts the Commission in that case denied a permit to the owner of the equipment.

The salient facts should be mentioned to determine whether the same situation exists in the cases now before the Court.

The complainants, prior to July 1, 1935, and thereafter, owned trucks on which they paid the vehicle license fees, which
 34 trucks were used by common carriers to transport freight between St. Louis and Chicago. The shipments went forward in the names of the common carriers, who supervised the loading and unloading of the trucks and collected the charges. Complainants were paid an amount for each trip, dependent upon the weight of the load carried and the compensation derived from its carriage. Complainants carried fire, theft, and collision insurance on their equipment, and while public liability and cargo insurance were taken out in the first instance by the common carriers, the cost of such insurance was charged to the complainants. The cargo insurance covered only damage over the sum of \$100.00, and complainants agreed with the carriers to be responsible for damage under that sum, and were in some instances compelled to pay such losses. The drivers of the trucks were employees of complainants, who hired, paid and discharged them. The complainants were free to take any route they chose between the designated points, and there were two or more routes available between the two cities. The common carriers exercised no control over the routing, except to request on occasions that drivers register at certain stations along the road. In some instances the complainants had a full load from one common carrier, and at other times they had fractional loads for one, two or more carriers on the same truck on the same trip. At no time were the trucks of
 complainants in the exclusive service of any common carrier.

35 Under these circumstances were complainants Contract carrier?

The statute defines a contract carrier (49 U. S. C. A. 303):

"The term 'contract carrier by motor vehicle' means any person not included under paragraph (14) of this section, who or which, under special and individual contracts or agreements, and whether directly or by a lease or any other arrangement, transports passengers or property in interstate or foreign commerce by motor vehicle for compensation."

The Act carries its own limitations. The section defining terms used excludes from the operation of the law, "the casual, occasional or reciprocal transportation of passengers or property in interstate or foreign commerce for compensation by any person not engaged in transportation by motor vehicle as a regular occupation or business." Sec. 303 (b). Consequently one who occasionally furnishes equipment for interstate transportation does not come within the Act. It cannot be said that if permits are granted in these cases, they must be granted in every instance

where on July 1, 1935, a person or corporation permitted his or its trucks to be used in interstate hauling. The person permitting his trucks to be used must have been engaged in the transportation business as a regular occupation or business. In these cases there is no question but that complainants qualify in this regard.

The defendants contend that the purpose of the "grandfather clause" in the Motor Carrier Act was to allow only those carriers who had been dealing with shippers directly on July 1, 1935, to continue their operations without a determination of convenience and necessity. The Act itself refutes this argument, in that it recognizes that persons often act as brokers of motor transportation, and requires that such persons take out brokers' licenses. Although these persons deal directly with the shippers, they are not required to obtain common or contract carriers' licenses; on the contrary, the Act provides that the persons to whom the brokers turn over their business must have a carrier's license.

Section 303 (18), U. S. C. A. 49, provides:

"The term 'broker' means any person not included in the term 'motor carrier' and not a bona fide employee or agent of any such carrier, who or which, as principal or agent, sells or offers for sale any transportation subject to this chapter, or negotiates for, or holds himself or itself out by solicitation, advertisement, or otherwise as one who sells, provides, furnishes, contracts, or arranges for such transportation."

Section 311 (b) provides for the issuance of licenses to brokers upon qualifying under the Act.

In thus recognizing that common and contract carriers need not contract directly with the shipping public, but that such contracts may be made through third persons, such as brokers, Congress has shown a clear intention that licensing of carriers should not be affected by the fact that dealings were not had directly with shippers. Nothing in the statute indicates that a carrier must deal directly with the shipper in order to be entitled to a license under the Act.

In *United States v. Brooklyn Eastern Terminal*, 249 U. S. 396, it was held that the Terminal was a carrier though not organized or held out as such, and though it had not filed tariffs nor undertaken to transport property for all who applied, but merely carried freight as agent for certain railroads with which it had made special contracts. See also *United States v. California*, 297 U. S. 175; *Union Stock Yard & Transit Co. v. United States*, 308 U. S. 213, 220. It was not the method of fixing charges, nor the parties with which

complainants contracted, but what they did, that characterized their undertaking.

The complainants transported freight in interstate commerce for compensation under agreements with common carriers. They actually engaged in the business of transportation. In so doing they provided the trucks and drivers, paid the license fees for using the highways, and assumed the responsibility for loss or damage to freight entrusted to them. This obligation they discharged both by carrying insurance and by payment of losses. The trucks were not used exclusively by any one common carrier, but by several. Even when called by one carrier, on some occasions the use of the trucks on the particular trip was not limited to the service of that carrier, but the freight of other carriers was transported in the same truck at the same time. These facts show that the control of the equipment was in the hands of complainants, and not in the hands of the common carriers.

Complainants were, under the evidence, contract carriers on July 1, 1935, and have so operated since that time. Their status has not been changed by the subsequent extension of their business, as the statute does not restrict the right of the carrier or add to his or its equipment and facilities over the routes, between the termini or within the territory specified in the permit, as the development of the business and the demands of the public shall require. Sec. 309 (b).

The statute says if they transport freight under special agreements "directly or by a lease or any other arrangement" for compensation, they are contract carriers. This language is broad. Congress purposely so provided. It may be that the administrative process would be simpler had the statute been made to read otherwise. It might have been better to further limit the number of motor carriers, but this is not for the Court to say. Congress enacted the statute; it means what it says.

The conclusion seems inevitable that the common carriers did not have exclusive control of and dominion over the trucks of complainants while they were engaged in the transportation business, and that the conclusion of the Commission to that effect has no substantial basis in the evidence offered.

The prayer of the complaints will be granted to the extent of setting aside the orders entered. Judgments accordingly may be tendered for approval, signature and entry.

(Sgd.) CHARLES B. DAVIS,

(Sgd.) GEO. H. MOORE,

United States District Judges.

(Sgd.) J. W. WOODROUGH,

United States Circuit Judge.

39 In District Court of the United States for the Eastern Division of the Eastern District of Missouri

No. 599

N. E. ROSENBLUM TRUCK LINES, INC., A CORPORATION, PLAINTIFF
VS.

UNITED STATES OF AMERICA AND THE INTERSTATE COMMERCE
COMMISSION, DEFENDANTS

Before JOSEPH W. WOODROUGH, Circuit Judge, CHARLES B. DAVIS and GEORGE H. MOORE, District Judges, on application for injunction.

Findings of fact

Filed Jan. 14, 1941

1. That plaintiff, a corporation organized under the laws of Missouri, is successor in interest to N. E. Rosenblum, an individual heretofore doing business as N. E. Rosenblum, Truck Lines. Plaintiff brings this action under Sections 24 and 209 of the Judicial Code (28 U. S. C. A., Sections 41, 44, and 45) to review, enjoin, suspend and set aside an order of the Interstate Commerce Commission entered on July 1, 1940, in a proceeding entitled MC-13853, N. E. Rosenblum Truck Lines, Inc., Contract Carrier Application, wherein applicant was denied a certificate of public convenience and necessity or a permit authorizing continuance of operations as a common or a contract carrier by motor vehicle of general commodities, in interstate or foreign commerce, between St. Louis, Mo., and Chicago, Ill., over certain specified routes.

40 2. That the Commission concluded from the evidence that: "It is clear from the record, and we so conclude, that applicants' equipment prior to February 1936 was operated solely under the direction and control of the common carriers and under the latter's responsibility to the general public and to the shippers. As to such operations, applicants do not qualify as carriers by motor vehicle within the meaning of the act and are consequently not entitled to a certificate or a permit under the 'grandfather' clause of section 206 (a) or 209 (a) thereof."

3. That said Rosenblum, prior to July 1, 1935, operated three tractor-trailer units as a regular occupation or business, hauling freight between the points in question for large truck companies,

principally for Transamerican Freight Lines, Inc. Plaintiff introduced testimony that he had hauled for various other truck lines prior to that date, and the evidence of protestants to dispute this testimony showed only that he had hauled no freight for some of such other companies after July 1, 1935. In so hauling for said carriers, Rosenblum was paid a lump sum per trip on dock-to-dock movements. He carried fire, theft, and collision insurance on his equipment, while the insurance on the cargo and public liability insurance were ordinarily taken out in the first instance by Transamerican or other carriers for which Rosenblum was working, the amount of such insurance being charged to and paid by Rosenblum. The cargo insurance covered only damage above the sum of \$100.00; and Rosenblum agreed with the

41 common carrier to be responsible for damage under that sum, and was so held liable under that agreement in one instance. Drivers of the trucks were employees of Rosenblum, but the loading and unloading of trucks and sealing of trailers on each trip were handled by the common carriers. Expenses of maintenance and upkeep on the equipment, and costs of travel were paid by Rosenblum. Registration on the trucks was obtained from the State authorities by Rosenblum. The latter was ordinarily free to take any route he chose between the designated points, and the common carrier exercised no control over the routing of his trucks, except to request that most of the trucks register at registration stations at certain points en route. Protestants' own witness testified that the common carrier did not usually designate the specific routes to be taken by Rosenblum's trucks. The common carriers called upon plaintiff to haul cargoes when traffic was heavy and extra trucks were needed to handle the business. In some instances Rosenblum carried half of a load for one carrier, and half for another, or other fractional loads for various carriers. The compensation to Rosenblum varied according to the particular load and the profits received by the common carrier.

4. That prior to July 1, 1935, and since that time, Rosenblum's equipment was operated principally under his own direction and control, and on his own responsibility.

1. That this Court has jurisdiction to entertain plaintiff's petition to enjoin the enforcement of and set aside the order of the Interstate Commerce Commission of July 1, 1940, denying to plaintiff a certificate of convenience and necessity or permit.

2. That plaintiff or its predecessor was in bona fide operation as a contract carrier in interstate commerce on July 1, 1935, over the routes for which application is made, and has so operated since that time; that plaintiff in so operating assumed control, management and responsibility for the hauling of cargo.

3. That there is no substantial evidence in the record to support the order entered, and that plaintiff is entitled to an order enjoining, suspending and setting aside the order of the Interstate Commerce Commission.

J. W. WOODROUGH,
United States Circuit Judge.
CHARLES B. DAVIS,
GEO. H. MOORE,
United States District Judges.

44 In District Court of the United States for the Eastern Division of the Eastern District of Missouri

No. 599

N. E. ROSENBLUM TRUCK LINES, INC., A CORPORATION, PLAINTIFF

vs.

UNITED STATES OF AMERICA AND THE INTERSTATE COMMERCE COMMISSION, DEFENDANTS

Before Hon. JOSEPH W. WOODROUGH, United States Circuit Judge, Hon. CHARLES B. DAVIS, United States District Judge, and Hon. GEO. H. MOORE, United States District Judge, sitting as the District Court of the United States for the Eastern District of Missouri, pursuant to the provisions of Sections 208 and 209 of the Judicial Code, 28 U. S. C. A. 44, 45 and 47.

Final Decree and Judgment

Filed Jan. 20, 1941

This cause came on for hearing on the complaint of the plaintiff on December 9, 1940, when the plaintiff appeared by its solicitors of record, the United States of America and the Interstate Commerce Commission appeared by their respective solicitors of record, and, the transcript of proceedings and evidence had and presented before the Interstate Commerce Commission on plaintiff's application to the Commission for a permit to continue in business as a contract carrier of freight by motor vehicle, was

by the plaintiff offered in evidence, the defendant admitting that said transcript contained a complete record of all the evidence presented therein before the Interstate Commerce Commission, and the cause was presented by the parties to the Court for determination, under the pleadings filed and the proof then adduced and the arguments of the parties, as well as briefs thereafter filed by the parties.

And, the Court being fully advised in the premises, and having filed herein on January 14, 1941, its findings of fact and conclusions of law as well as its written opinion holding that there is no substantial evidence in the record of proceedings before the Interstate Commerce Commission to support the findings and conclusions on which the order of the Commission is

45 based, and that the Commission by said order erred in its conclusion of fact and in the application of the controlling law, and that because of said erroneous finding, conclusion, and order the plaintiff is entitled to have said order enjoined, annulled, and set aside; now,

Therefore, It Is Adjudged and Decreed that the order of the Interstate Commerce Commission made July 1, 1940, in the proceeding before said Commission entitled "No. MC-13853, N. E. Rosenblum Truck Lines, Inc., Contract Carrier Application, St. Louis, Missouri," denying the application of N. E. Rosenblum Truck Lines, Inc., for a certificate or permit as a contract carrier, be and it hereby is annulled and set aside, and defendants are enjoined from enforcing or attempting to enforce said order.

Done this 20th day of January 1941.

For the Court:

J. W. WOODROUGH,

United States Circuit Judge.

CHARLES B. DAVIS,

United States District Judge.

GEO. H. MOORE,

United States District Judge.

[File endorsement omitted.]

Civil Action No. 599

N. E. ROSENBLUM TRUCK LINES, INC., A CORPORATION, PLAINTIFF
vs.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, DEFENDANTS

Assignment of errors

Filed March 13, 1941

The United States of America and Interstate Commerce Commission object and except to the following actions of the court in the above-styled case in connection with its final decree, opinion, findings of fact, and conclusions of law and file the following assignment of errors with and as a part of their petition for appeal to the Supreme Court of the United States from the decree of the District Court entered January 20, 1941, in said cause:

The District Court committed error—

1. In entering the decree sustaining, annulling, and setting aside the order of the Interstate Commerce Commission.

2. In failing to dismiss the plaintiff's complaint for lack of equity.

50 3. In weighing the evidence heard by the Commission and making a statement of fact in its opinion and findings of fact, instead of limiting its consideration to the question of whether the Commission record contained substantial evidence to sustain the Commission's report and order.

4. In granting the prayer of plaintiff's complaint upon the statement of facts made in the court's opinion and findings of fact, instead of denying it.

5. In failing to find that upon the facts stated in the Commission's report, the Commission's order is valid and should be sustained.

6. In failing to find that upon the facts stated in the court's opinion and findings of fact the Commission's order is valid and should be sustained.

7. In failing to find that the facts stated in the Commission's report were supported by substantial evidence in the Commission record and that said findings of the Commission were sufficient in law to support its order.

8. In concluding, as stated in the second paragraph of the Court's "Conclusions of Law," "That the plaintiff or its predecessor was in bona fide operation as a contract carrier in interstate commerce on July 1, 1935, over the routes for which application

is made, and has so operated since that time; that plaintiff in so operating assumed control, management, and responsibility for the hauling of cargo."

9. In concluding, as stated in the third paragraph of the Court's "Conclusions of Law," "That there is no substantial evidence in the record to support the order entered, and that the plaintiff is entitled to an order enjoining, suspending, and setting aside the order of the Interstate Commerce Commission."

10. In failing to state what facts, if any, in the commission's report, the court found to be unsupported by substantial evidence.

HARRY C. BLANTON,

United States Attorney.

THURMAN ARNOLD,

Assistant Attorney General.

FRANK COLEMAN

Special Assistant to the Attorney General,

For the United States of America.

DANIEL W. KNOWLTON,

Chief Counsel.

NELSON THOMAS,

Attorney,

For Interstate Commerce Commission.

Service of copy of the foregoing assignment of errors is hereby acknowledged this 12th day of March 1941.

M. E. ARONOFF,

GUS O. NATIONS,

For N. E. Rosenblum Truck Lines, Inc

52 In District Court of the United States for the
Eastern District of Missouri, Eastern Division

Civil Action File No. 599

N. E. ROSENBLUM TRUCK LINES, INC., A CORPORATION, PLAINTIFF

vs.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, DEFENDANTS

Order allowing appeal

Filed March 13, 1941

On this day came the above-named defendants, by their attorneys, and presented their petition for appeal and their assignment of errors, together with a jurisdictional statement in

accordance with the Revised Rules of the Supreme Court of the United States, which have been duly filed, and upon consideration thereof it is

Ordered and adjudged that an appeal to the Supreme Court of the United States from the final decree heretofore entered in the above-entitled cause on the 20th day of January 1941, granting the prayer of the plaintiff's complaint to the extent and in the manner set out in said decree be, and it hereby is, allowed to said defendants; that a certified transcript of the record herein be transmitted in due course to the Supreme Court of the United States (except that the Court directs that the transcript of the record before the Interstate Commerce Commission in No. MC 13853, N. E. Rosenblum Truck Lines, Inc., Contract Carrier Application, introduced in evidence herein by plaintiff be transmitted physically to the Supreme Court instead of a copy thereof).

Dated March 13, 1941.

GEO. H. MOORE,
Judge, U. S. District Court.

Service of a copy of the foregoing order allowing appeal is hereby acknowledged this 12th day of March 1941.

M. E. ARONOFF,
GUS O. NATIONS,
For N. E. Rosenblum Truck Lines, Inc.

58 In District Court of the United States for the Eastern District of Missouri, Eastern Division

Civil Action No. 599.

N. E. ROSENBLUM TRUCK LINES, INC., A CORPORATION, PLAINTIFF
vs.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, DEFENDANTS

Præcipe for Transcript of Record

Filed March 13, 1941

To the CLERK:

You will please prepare a transcript of the record in the above-entitled cause to be transmitted to the Clerk of the Supreme Court of the United States pursuant to the appeal heretofore taken, and include in said transcript the following:

1. Plaintiff's complaint entitled "Petition to Enjoin, Suspend and Set Aside an Order of the Interstate Commerce Commission."
2. Amendment to the complaint filed at the final hearing December 9, 1940.

3. Answer of United States of America.
4. Answer of Interstate Commerce Commission.
5. Order convening three-judge District Court.
6. All evidence introduced in the case, consisting of a certified transcript of proceedings before the Interstate Commerce Commission in N. E. Rosenblum Truck Lines, Inc., Contract Carrier Application, No. MC-13853. (This transcript as filed in the District Court shall be physically transmitted to the Supreme Court instead of a copy thereof.)
7. Record entry of final hearing before three-judge court December 9, 1940.
8. Opinion of the Court.
9. Court's findings of fact and conclusions of law.
10. Final decree.
11. Petition for appeal.
12. Assignment of errors.
13. Statement as to jurisdiction.
14. Order allowing appeal.
15. Notice (pursuant to Rule 12 of the Supreme Court) of service on appeal of petition for appeal, order allowing appeal, assignment of errors, statement of jurisdiction and proof of service thereof.
16. Citation on appeal.
17. Notice to Attorney General of Missouri and proof of service thereof.
18. Docket entries in proper order.
19. This praecipe for transcript of record.
20. Clerk's certificate.

HARRY C. BLANTON,
United States Attorney.

THURMAN ARNOLD,
Assistant Attorney General.

FRANK COLEMAN,
Special Assistant to the Attorney General.
For United States of America.

59-A

DANIEL W. KNOWLTON,
Chief Counsel.

NELSON THOMAS,
Attorney:

For Interstate Commerce Commission.

Service of the foregoing praecipe for transcript of record and the receipt of a copy thereof are hereby acknowledged this 12th day of March 1941.

M. E. ARONOFF.

GUS O. NATIONS.

For N. E. Rosenblum Truck Lines, Inc.

65 In United States District Court for the Eastern Division
of the Eastern Judicial District of Missouri

No. 601

JACOB B. MARGOLIES, DOING BUSINESS AS MANHATTAN TRUCK
LINES, PLAINTIFF

vs.

UNITED STATES OF AMERICA AND THE INTERSTATE COMMERCE
COMMISSION, DEFENDANTS

*Petition to enjoin, suspend and set aside an order of the
Interstate Commerce Commission*

Filed Oct. 8, 1940

(as amended by interlineation Oct. 12, 1940)

1. Plaintiff is a citizen and resident of St. Louis County, State of Missouri and is engaged in business as a contract carrier of general commodities by motor vehicle between St. Louis, Missouri on the one hand and Chicago, Illinois on the other, on various routes and serving various intermediate points as hereinafter more specifically set-out, and has his principal place of business at 3201 Papin Street in the City of St. Louis, Missouri.

2. Plaintiff is successor in interest to Truman E. Baulos, an individual, heretofore doing business as the Truman E. Baulos Truck Lines, and plaintiff and his predecessor in interest were on and before July 1, 1935, and since said date have been continuously engaged in bona fide operation as a contract carrier by motor vehicle of general commodities within the meaning, purpose and intent of Section 209 (a) of the Motor Carrier Act of 1935, now Transportation Act of 1940. (49 U. S. C. A. Section 309.)

3. This action is brought under and by virtue of the provisions of Section 205 (g) of the Transportation Act of 1940 and Sections 24 and 209 of the Judicial Code (28 U. S. C. A., Sections 41, 43, 44, and 45), and has for its purpose enjoining, suspending and setting aside of an order of the Interstate Commerce Commission, in a proceeding wherein Jacob B. Margolies, doing business as Manhattan Truck Lines, successor in interest to Truman E. Baulos, seasonably filed appropriate application with the Interstate Commerce Commission and was assigned Docket

No. MC-36692, as hereinafter more fully appears, and, hence, is within the jurisdiction confided to this court by the law herein mentioned.

4. February 11, 1936, plaintiff's predecessor in interest herebefore named filed with the Interstate Commerce Commission its application for a certificate or a permit, authorizing continuance of operations as a contract carrier by motor vehicle of general commodities in interstate commerce between St. Louis, Missouri, and Chicago, Illinois, over two specified routes, as provided by Section 209 of the Motor Carrier Act of 1935 (49 U. S. C. A., Section 309).

5. Thereafter, said application was referred by the Interstate Commerce Commission, Division 5, to Joint Board No. 135 represented by Hon. H. A. Barr, Commissioner, Illinois Commerce Commission and wherein William A. Maidens, Examiner, Interstate Commerce Commission, was present and the hearing was set for December 1, 1936, in Chicago, Illinois. The applicant, your plaintiff's predecessor, appeared before said Board as did certain protestants who opposed the application, and after the hearing, the taking of evidence and considerations of briefs filed by the parties to the proceeding and after said proceeding was duly transferred by order of Division 5 of the Interstate Commerce Commission from the said Board to Examiner Maidens for an appropriate Report and Recommended Order, said order was duly served on March 22, 1938, and by said order the Examiner recommended that a permit be granted to the applicant therein.

6. Thereafter, on application of the protestants therein, a further hearing was had on November 28, 1938, before Joint Board No. 135 consisting of the Hon. John C. Highberger, Missouri Public Service Commission, Hon. Louis J. Freehof, Illinois Commerce Commission, and wherein the Hon. H. W. Angle, Examiner, Interstate Commerce Commission, was present, and wherein the applicant adopted the record made at the first hearing which was held on December 1, 1936, and said rebuttal testimony was given by the protestants. After such evidence was received and briefs duly considered by said board, it did, on July 3, 1939, serve its report and recommended order by which it concluded that plaintiff herein was not entitled to the issuance of said permit and recommended that said application be denied.

7. July 1, 1940, said Division 5, acting by and through Commissioners Rogers and Alldredge, rendered a decision and opinion in writing holding that the applicant, this plaintiff, was not in bona fide operation as a contract carrier by motor vehicle on July 1, 1935, and hence is not entitled to said permit under

67 the provisions of Section 209 of the Motor Carrier Act; and denied said application. Commissioner Lee, one of the Commissioners and Chairman of Division 5 prepared and filed a dissenting opinion by which he concluded that plaintiff was bona fide in operation as a contract carrier by motor vehicle on July 1, 1935, and hence is entitled to the issuance of said permit, and that the permit should be granted.

The order and opinion of Commissioners Rogers and Alldredge as a majority of Division 5 and the dissenting opinion of Chairman and Commissioner Lee are fully set out in Exhibit A which is attached hereto and by this reference made a part hereof.

8. Thereafter, plaintiff filed its petition for reconsideration of said order of Division 5 and for rehearing on plaintiff's application for a permit which petition for reconsideration was overruled and denied by the entire Commission on October 2, 1940, allowing the effective date of the Cease and Desist Order to remain as October 12, 1940; and plaintiff as said applicant has now exhausted all the remedies afforded him by law in the proceeding before the Commission.

9. The said order of Division No. 5 denying to plaintiff a permit, by the terms of said order, becomes effective, unless suspended or set aside by this court, on October 12, 1940, at which time, if said order remains in full force and effect, plaintiff's right to continue and pursue its business as contract carrier will expire because of said order.

10. If said order remains in force and effect beyond said October 12, 1940, plaintiff will be obliged to discontinue its business and to refuse to accept for shipment or to carry the commodities which it is under contract to carry for divers and sundry shippers now using plaintiff's vehicles, service and equipment; and as a result of said enforced cessation of operation plaintiff's business will be totally destroyed, its good will lost, its contracts with shippers forfeited or invalidated by its enforced default and its employees deprived of employment.

11. The decision and ruling of Division No. 5, acting through Commissioners Rogers and Alldredge, in the light of the undisputed facts shown in evidence at the hearings before the examiners, is erroneous in law in that it denies to plaintiff the right to a permit provided by Section 209 of the Motor Carrier Act.

68 Said decision and ruling is erroneous in law as shown upon its fact in that it denies to plaintiff a permit although the facts stated in said opinion show that in law plaintiff is entitled to said permit.

Such decision is erroneous in law as shown by the dissenting opinion of Chairman and Commissioner Lee of Division No. 5 of the Commission.

The undisputed facts proven in evidence at the hearings before the examiners, and the conclusions of fact stated in the ruling and decision, show clearly that in law the plaintiff and its predecessor have been continuously and bona fide in operation as a contract carrier by motor vehicle since 1934 over the routes and within the territory for which application was made, and, hence, is entitled to the permit prayed under the provisions of Section 209 of said act.

There was no substantial evidence before the Commission to support the following conclusion in the decision of the Commission:

"It is clear from the record, and we so conclude, that applicants' equipment prior to February 1936, was operated solely under the direction and control of the common carriers and under the latter's responsibility to the general public and to the shippers."

but the undisputed evidence shows said conclusion to be erroneous; and said conclusion, without evidentiary support, is, arbitrary and capricious.

12. Unless said decision and ruling are suspended and set aside and the Commission is enjoined from enforcing the same, plaintiff will suffer great and irreparable injury and its business will be destroyed and the business of the shippers whom it serves will suffer great inconvenience and injury.

13. Unless this court shall by an interlocutory order enjoin and restrain the enforcement of said decision and ruling pending final determination of this action, plaintiff will in effect and for all practical purposes be denied the right to a judicial review of said ruling and decision, since cessation of plaintiff's business for a single day would result in its total destruction, and thus plaintiff's rights under the law would be denied it; and this court should, to protect its jurisdiction herein, as well as plaintiff's right to judicial review of the order, suspend said order pending final judgment herein.

Wherefore, plaintiff prays as follows:

1. That notice and summons be issued herein to the defendants and served upon the United States and the Interstate Commerce Commission as required by law;

2. That the judge of this court immediately call to his assistance herein two additional judges as required by Section 208 of the Judicial Code (28 U. S. C. A. 47), that a hearing be had on or before October 12, 1940, and, on consideration of the

premises, an interlocutory order be made and issued suspending said order and restraining the enforcement thereof pending final determination of this action.

69 3. That the action and proceeding before the Interstate Commerce Commission heretofore mentioned and described, as well as the ruling and decision of Division No. 5 thereof, be reviewed and considered; that upon consideration thereof said ruling and decision be annulled and its enforcement forbidden and enjoined; that the errors of law in said ruling and decision be corrected and the Interstate Commerce Commission be directed and enjoined to grant to plaintiff the certificate or permit to which in law the record in said proceeding shows plaintiff to be entitled.

4. That the court make such other orders from time to time as in the premises as the protection and enforcements of plaintiff's rights herein require.

M. E. ARONOFF,

GUS O. MATIONS,

Attorneys for Plaintiff.

[*Duly sworn to by M. E. Aronoff; jurat omitted in printing.*]

77 In United States District Court for the Eastern Division
of the Eastern Judicial District of Missouri

No. 601

JACOB B. MARGOLIES, DOING BUSINESS AS MANHATTAN TRUCK
LINES, PLAINTIFF

vs.

UNITED STATES OF AMERICA AND THE INTERSTATE COMMERCE
COMMISSION, DEFENDANT

Order convening three-judge court

Filed Oct. 9, 1940

Now this day comes the above named plaintiff by his attorneys and exhibits and presents to the court the complaint heretofore filed in this case. And, it appearing from said complaint that the action herein is begun and prosecuted under Sections 24, 208, and 209 of the Judicial Code (28 U. S. C. A. 41, 43, 44, 45, 46, and 47) to review, enjoin, suspend, and set aside an order of the Interstate Commerce Commission, and pursuant to the said provisions of law governing such matters this case should be heard and determined by a court of three judges, one of whom should be a Circuit Judge, it is therefore

Ordered that the Hon. Joseph W. Woodrough, Judge of the Circuit Court of Appeals of the Eighth Judicial Circuit, and the Hon. George H. Moore, Judge of the District Court for the Eastern District of Missouri are called and requested to assist me at the hearing of said case and particularly on the hearing on the prayer for an interlocutory injunction and the allowance of a temporary stay or suspension of the order of the Interstate

Commerce Commission referred to in said complaint, which
78 said hearing is set and docketed in Room No. 1 of the New Federal Building, 12th and Market Streets, St. Louis, Missouri, at 10:00 A. M. October 12th, 1940.

Done this 9th day of October 1940.

[SIGNED]

CHARLES B. DAVIS,
District Judge.

61 In District Court of the United States for the Eastern District of Missouri Eastern Division

Civil Action File No. 601—Court No. 1

JACOB B. MARGOLIES, DOING BUSINESS AS MANHATTAN TRUCK
LINES, PLAINTIFF

vs.

UNITED STATES OF AMERICA AND THE INTERSTATE COMMERCE
COMMISSION, DEFENDANT

Answer of Interstate Commerce Commission

Filed Oct. 12, 1940

Comes now the Interstate Commerce Commission (hereinafter called the Commission) and for its answer to the petition herein, as amended, answers and says:

I

Answering the allegations of paragraphs 1, 3, 4, 5, 6, 7, 8, and 9 of the petition, the Commission, for the purposes of this suit and for none other, admits that the facts therein stated are true.

II

Answering the allegations of paragraphs 2 and 11 of the petition, the Commission denies each of and all the allegations therein contained.

Answering the allegations of paragraphs 10, 12, and 13 of the petition, the Commission alleges and shows that the plaintiff may legally carry on its business as a common carrier by motor vehicle only during the pendency before the Commission of the application for a certificate of convenience and necessity filed by plaintiff's predecessor on February 10, 1936, as alleged in paragraph 4 of the petition, and that the pendency of said application will terminate upon the Commission's order denying the same becoming effective on October 12, 1940.

Further answering said paragraphs the Commission denies that its decision and order of July 1, 1940, will occasion any legal damage to the plaintiff and alleges and shows that any disruption or disorganization of the plaintiff's business, as alleged in said paragraphs, would arise from the provisions of the Motor Carrier Act, and the operation of law and not from the action of the Commission pursuant to law, and the Commission denies the allegations of said paragraphs of plaintiff's petition.

IV

Further answering the allegations of the petition, the Commission alleges and shows that in the hearings upon the application for a "grandfather" certificate in the proceeding styled "Jacob B. Margolies (Successor in Interest to Truman E. Baulos) Contract Carrier Application," No. MC-36692, which was heard and decided with "N. E. Rosenblum Truck Lines, Inc., Contract

Carrier Application," No. MC-13853, full hearings were had in which all interested parties, including the plaintiff, participated; that a large volume of testimony and other evidence bearing upon the issues involved was received by the Commission and the Commission, through its Division 5, considered and weighed carefully each fact, circumstance, and condition submitted to it on behalf of the parties in said proceeding, and on July 1, 1940, made its report and order denying said application, as alleged in plaintiff's petition; that a true copy of said report is attached to plaintiff's petition as Exhibit A thereto and is officially reported in 24 Interstate Commerce Commission Motor Carrier Cases (M. C. C.), beginning on page 121; that in said report and order the Commission set out and described in detail all the proceedings by and before it in said matter, stated the substance of the evidence and in conclusion found that the petition should not be granted. For a full, true, and correct statement of said proceeding and of the evidence before the Commission, the Court is respectfully referred to said report.

The Commission alleges and show that its said report and order of July 1, 1940, were not made or entered by it either arbitrarily, unjustly, or contrary to the evidence or without evidence to support them.

The Commission further denies that in making said report and order the Commission committed any error of law or made any erroneous finding of fact; that in making said report and order the Commission acted within the authority duly conferred upon it by law and denies each of and all the allegations to the contrary contained in the petition.

84 Except as herein expressly admitted, the Commission denies the truth of each of and all the allegations contained in the petition, especially in so far as they conflict either with the allegations of this answer or with the findings, determinations, or conclusions of law or fact set out in said report and order of July 1, 1940.

All the above-stated matters and things the Commission is ready to maintain and prove as this Honorable Court shall direct, and hereby prays that the petition be dismissed.

INTERSTATE COMMERCE COMMISSION,
By NELSON THOMAS,
Nelson Thomas, *Attorney*.

DANIEL W. KNOWLTON,
Chief Counsel,
Of Counsel.

86 In the District Court of the United States for the
Eastern District of Missouri
Civil Action No. 601

JACOB B. MARGOLIES, DOING BUSINESS AS MANHATTAN TRUCK LINES,
PLAINTIFF

vs.

UNITED STATES OF AMERICA AND THE INTERSTATE COMMERCE
COMMISSION, DEFENDANTS

Answer of the United States of America

Filed Dec. 7, 1940

The defendant, United States of America:

1. Admits allegations of paragraphs 1, 3, 4, 5, 6, 7, 8, and 9.
2. Denies the allegations of paragraphs 2, 11, 12, and 13.
3. Admits the allegations of paragraphs 10 to the first semi-colon and denies the remainder.

4. Admits the allegations of all paragraphs of the complaint which correspond to the findings of the Commission contained in its report and order, or to the evidence of record before the Commission; denies those which are inconsistent therewith; and is without knowledge or information sufficient to form a belief as to the truth of all the remaining allegations not herein admitted nor denied.

87

FRANK COLEMAN,
Frank Coleman,

*Special Assistant to the Attorney General,
Department of Justice, Washington, D. C.,
Counsel for the United States.*

THURMAN ARNOLD,

Assistant Attorney General.

HARRY C. BLANTON,

United States Attorney.

98 In District Court of the United States for the Eastern
Division of the Eastern District of Missouri

No. 601

J. B. MARGOLIES, AN INDIVIDUAL DOING BUSINESS AS MANHATTAN
TRUCK LINES, PLAINTIFF

vs.

UNITED STATES OF AMERICA AND THE INTERSTATE COMMERCE
COMMISSION, DEFENDANTS

Before JOSEPH W. WOODBROUGH, Circuit Judge, CHARLES B.
DAVIS and GEORGE H. MOORE, District Judges, on application for
injunction.

Findings of fact

Filed Jan. 14, 1941

1. That plaintiff, a resident of Missouri, is successor in interest to Truman E. Baulos, an individual heretofore doing business as the Truman E. Baulos Truck Lines. Plaintiff brings this action under Sections 24 and 209 of the Judicial Code (28 U. S. C. A., Sections 41, 43, 44 and 45) to review, enjoin, suspend and set aside an order of the Interstate Commerce Commission entered on July 1, 1940 in a proceeding entitled MC-36692 Jacob B. Margolies (Successor in Interest to Truman E. Baulos), Contract Carrier Application, wherein applicant was denied a certificate of public convenience and necessity or a permit authorizing continuance of operations as a common or a contract carrier

by motor vehicle of general commodities, in interstate or foreign commerce, between St. Louis, Mo. and Chicago, Ill. over three specified routes.

99 2. That the Commission concluded from the evidence that: "It is clear from the record, and we so conclude, that applicants' equipment prior to February 1936 was operated solely under the direction and control of the common carriers and under the latter's responsibility to the general public and to the shippers. As to such operations, applicants do not qualify as carriers by motor vehicle within the meaning of the act and are consequently not entitled to a certificate or a permit under the 'grandfather' clause of section 206 (a) or 209 (a) thereof."

3. That Baulos, prior to July 1, 1935, was employed as office manager and dispatcher for E. H. Hoffmann Lines, Inc., a motor carrier operating between St. Louis and Chicago. Later, in October, 1935, Baulos was employed by Be-Mac Transport Company, Inc., as its Chicago office manager, on a salary basis, and from that time until February, 1936, he operated vehicles for that company under arrangements similar to those formerly had with the Hoffmann company. While employed by Hoffmann, Baulos acquired three tractor-trailer units prior to July 1, 1935, and transported freight as a regular occupation or business between the points in question principally for the Hoffmann company, at a truckload price per trip. There was some evidence of similar transportation for Be-Mac, Ill-Mo. and Transamerican Freight Lines, Inc. Fire, theft and collision insurance on the tractor-trailer units was taken out by Baulos, and public
100 liability and property-damage insurance was either taken out by the common carrier and charged to the account of Baulos, as shown in the exhibits, or was handled by the finance company through which Baulos arranged the purchase of his equipment. The evidence did not show which party carried cargo insurance, the witness testifying that this was the subject of a law suit at the time. Baulos testified that he at all times had complete control and supervision of the trucks and the drivers. This was not disputed insofar as the Hoffmann company was concerned, though a witness from Be-Mac testified that the latter exercised such control over trucks operated for them by Baulos. On numerous occasions prior to July 1, 1935, as well as subsequent thereto, Baulos carried fractional truck loads for the Hoffmann company, filling out the loads with cargo for other companies. Registration on the tractor-trailer units was taken out with the state authorities by Baulos. Drivers of the trucks were employees of Baulos, who paid their salaries, as well as all expenses of maintenance and upkeep on the equipment and costs of travel. The usual compensation to Baulos was \$30.00

gross for a one-way trip between the points, but this was subject to change on any particular trip, depending on the weight of the load and the profits.

4. That prior to July 1, 1935, and since that time, Baulos' equipment was operated principally under his own direction and control, and on his own responsibility.

101

Conclusions of Law

1. That this Court has jurisdiction to entertain plaintiff's petition to enjoin the enforcement of and to set aside the order of the Interstate Commerce Commission of July 1, 1940, denying the plaintiff a certificate of convenience and necessity or permit.

2. That plaintiff or its predecessor was in bona fide operation as a contract carrier in interstate commerce on July 1, 1935, over the routes for which application is made, and has so operated since that time; that plaintiff in so operating assumed control, management and responsibility for the hauling of cargo.

3. That there is no substantial evidence in the record to support the order entered, and that plaintiff is entitled to an order enjoining, suspending and setting aside the order of the Interstate Commerce Commission.

J. W. WOODROUGH,

United States Circuit Judge.

CHARLES B. DAVIS,

GEO. H. MOORE,

United States District Judges.

103 In District Court of the United States for the Eastern Division of the Eastern District of Missouri

No. 601

J. B. MARGOLIES, AN INDIVIDUAL DOING BUSINESS AS MANHATTAN TRUCK LINES, PLAINTIFF

vs.

UNITED STATES OF AMERICA AND THE INTERSTATE COMMERCE COMMISSION, DEFENDANTS

Before Hon. JOSEPH W. WOODROUGH, United States Circuit Judge, Hon. CHARLES B. DAVIS, United States District Judge, and Hon. GEORGE H. MOORE, United States District Judge, sitting as the District Court of the United States for the Eastern District of Missouri, pursuant to the provisions of Sections 208 and 209 of the Judicial Code, 28 U. S. C. A. 44, 45, and 47.

Final decree and judgment

Filed January 20, 1941

This cause came on for hearing on the complaint of the plaintiff on December 9, 1940, when the plaintiff appeared by its solicitors of record, the United States of America and the Interstate Commerce Commission appeared by their respective solicitors of record, and, the transcript of proceedings and evidence had and presented before the Interstate Commerce Commission on plaintiff's application to the Commission for a permit to continue in business as a contract carrier of freight by motor vehicle, was by the plaintiff offered in evidence, the defendant admitting that said transcript contained a complete record of all the evidence presented therein before the Interstate Commerce Commission, and the cause was presented by the parties to the Court for determination, under the pleadings filed and the proof then adduced and the arguments of the parties, as well as briefs thereafter filed by the parties.

And, the Court being fully advised in the premises, and having filed herein on January 14, 1941, its findings of fact and conclusions of law as well as its written opinion holding that there is no substantial evidence in the record of proceedings before the Interstate Commerce Commission to support the findings and conclusions on which the order of the Commission is based, and that

the Commission by said order erred in its conclusion
104 of fact and in the application of the controlling law, and
that because of said erroneous finding, conclusion, and
order the plaintiff is entitled to have said order enjoined, annulled, and set aside; now,

Therefore, it is adjudged and decreed that the order of the Interstate Commerce Commission made July 1, 1940, in the proceeding before said Commission entitled "No. MC-36692, Jacob B. Margolies, Contract Carrier Application, St. Louis, Missouri," denying the application of Jacob B. Margolies, doing business as Manhattan Truck Lines, for a certificate or permit as a contract carrier be and it hereby is annulled and set aside, and defendants are enjoined from enforcing or attempting to enforce said order.

Done this 20th day of January 1941.

For the Court :

J. W. WOODBROUGH,

United States Circuit Judge.

CHARLES B. DAVIS,

United States District Judge.

GEO. H. MOORE,

United States District Judge.

40 UNITED STATES VS. N. E. ROSENBLUM TRUCK LINES ET AL.

108 In District Court of the United States for the
Eastern District of Missouri, Eastern Division

Civil Action. File No. 601

J. B. MARGOLIES, AN INDIVIDUAL DOING BUSINESS AS MANHATTAN
TRUCK LINES, PLAINTIFF

vs.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION,
DEFENDANTS

Assignment of errors

Filed March 13, 1941

The United States of America and Interstate Commerce Commission object and except to the following actions of the court in the above-styled case in connection with its final decree, opinion, findings of fact and conclusions of law and file the following assignment of errors with and as a part of their petition for appeal to the Supreme Court of the United States from the decree of the District Court entered January 20, 1941, in said cause:

The District Court committed error—

1. In entering the decree sustaining, annulling and setting aside the order of the Interstate Commerce Commission.

2. In failing to dismiss plaintiff's complaint for lack of equity.

109 3. In weighing the evidence heard by the Commission and making a statement of fact in its opinion and findings of fact, instead of limiting its consideration to the question of whether the Commission record contained substantial evidence to sustain the Commission's report and order.

4. In granting the prayer of plaintiff's complaint upon the statement of facts made in the court's opinion and findings of fact, instead of denying it.

5. In failing to find that upon the facts stated in the Commission's report, the Commission's order is valid and should be sustained.

6. In failing to find that upon the facts stated in the court's opinion and findings of fact the Commission's order is valid and should be sustained.

7. In failing to find that the facts stated in the Commission's report were supported by substantial evidence in the Commission record and that said findings of the Commission were sufficient in law to support its order.

8. In concluding, as stated in the second paragraph of the Court's "Conclusions of Law," "That the plaintiff or its predecessor was in bona fide operation as a contract carrier in interstate commerce on July 1, 1935, over the routes for which application is made, and has so operated since that time; that plaintiff in so operating assumed control, management and responsibility for the hauling of cargo."

9. In concluding, as stated in the third paragraph of the Court's "Conclusions of Law," "That there is no substantial evidence in the record to support the order entered, and that
110 the plaintiff is entitled to an order enjoining, suspending and setting aside the order of the Interstate Commerce Commission."

10. In failing to state what facts, if any, in the Commission's report, the court found to be unsupported by substantial evidence.

HARRY C. BLANTON,

United States Attorney.

THURMAN ARNOLD,

Assistant Attorney General.

FRANK COLEMAN,

Special Assistant to the Attorney General.

For the United States of America.

DANIEL W. KNOWLTON,

Chief Counsel.

NELSON THOMAS,

Attorney.

For Interstate Commerce Commission.

Service of copy of the foregoing assignment of errors is hereby acknowledged this 12th day of March 1941.

M. E. ARONOFF,

GUS O. NATIONS,

For J. B. Margolies.

111 In the District Court of the United States for the
Eastern District of Missouri, Eastern Division

Civil Action No. 601

J. B. MARGOLIES, AN INDIVIDUAL DOING BUSINESS AS MANHATTAN
TRUCK LINES, PLAINTIFF

vs.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION,
DEFENDANTS

Order allowing appeal

Filed March 13, 1941

On this day came the above-named defendants, by their attorneys, and presented their petition for appeal and their assignment of errors, together with a jurisdictional statement in accordance with the Revised Rules of the Supreme Court of the United States, which have been duly filed, and upon consideration thereof it is

Ordered and adjudged that an appeal to the Supreme Court of the United States from the final decree heretofore entered in the above-entitled cause on the 20th day of January 1941, granting the prayer of the plaintiff's complaint to the extent and in the manner set out in said decree be, and it hereby is, allowed to said defendants; that a certified transcript of the record herein be transmitted in due course to the Supreme Court of the United States (except that the Court directs that
112 the transcript of the record before the Interstate Commerce Commission in No. MC 36692, Jacob B. Margolies Contract Carrier Application, introduced in evidence herein by plaintiff be transmitted physically to the Supreme Court instead of a copy thereof).

Dated March 13, 1941.

GEO. H. MOORE,
Judge, U. S. District Court.

Service of a copy of the foregoing order allowing appeal is hereby acknowledged this 12th day of March, 1941.

M. E. ARONOFF,
GUS O. NATIONS,
For J. B. Margolies.

117 IN DISTRICT COURT OF THE UNITED STATES FOR THE
EASTERN DISTRICT OF MISSOURI, EASTERN DIVISION

Civil Action No. 601

J. B. MARGOLIES, AN INDIVIDUAL DOING BUSINESS AS MANHATTAN
TRUCK LINES, PLAINTIFF

VS.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COM-
MISSION, DEFENDANTS

Præcipe for Transcript of Record

Filed March 13, 1941

To the CLERK:

You will please prepare a transcript of the record in the above-entitled cause to be transmitted to the Clerk of the Supreme Court of the United States pursuant to the appeal heretofore taken, and include in said transcript the following:

1. Plaintiff's complaint entitled "Petition to Enjoin, Suspend and Set Aside an Order of the Interstate Commerce Commission."

2. Amendment to the complaint filed at the final hearing December 9, 1940.

3. Answer of United States of America.

4. Answer of Interstate Commerce Commission.

5. Order convening three-judge District Court.

6. All evidence introduced in the case, consisting of a certified transcript of proceedings before the Interstate Commerce Commission in Jacob B. Margolies Contract Carrier Application, No. MC 36692. (This transcript as filed
118 in the District Court shall be physically transmitted to the Supreme Court instead of a copy thereof.)

7. Record entry of final hearing before three-judge court December 9, 1940.

8. Opinion of the Court.

9. Court's findings of fact and conclusions of law.

10. Final Decree.

11. Petition for Appeal.

12. Assignment of errors.

13. Statement as to jurisdiction.

14. Order allowing appeal.

15. Notice (pursuant to Rule 12 of the Supreme Court) of service on appeal of petition for appeal, order allowing appeal, assignment of errors, statement of jurisdiction and proof of service thereof.

16. Citation on appeal.
17. Notice to Attorney General of Missouri and proof of service thereof.
18. Docket entries in proper order.
19. This praecipe for transcript of record.
20. Clerk's certificate.

HARRY C. BLANTON,
United States Attorney.

THURMAN ARNOLD,
Assistant Attorney General.

FRANK COLEMAN,
Special Assistant to the Attorney General,
For United States of America.

119

DANIEL W. KNOWLTON,
Chief Counsel.

NELSON THOMAS,
Attorney,
For Interstate Commerce Commission.

Service of the foregoing praecipe for transcript of record and the receipt of a copy thereof are hereby acknowledged this 12th day of March 1941.

M. E. ARONOFF,
GUS O. NATIONS,
For J. B. Margolies.

Docket MC-13853. (Form B. M. C.-A)

In the Matter of the APPLICATION OF N. E. ROSENBLUM, INDIVIDUAL, DOING BUSINESS AS N. E. ROSENBLUM TRUCK LINES, OF 1125 SOUTH BROADWAY, ST. LOUIS, MISSOURI, FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR PERMIT (FORM B. M. C.-A) AUTHORIZING OPERATION AS A COMMON OR CONTRACT CARRIER BY MOTOR VEHICLE IN THE TRANSPORTATION OF COMMODITIES GENERALLY IN INTERSTATE COMMERCE, IN THE STATES OF ILLINOIS, MISSOURI, INDIANA, KENTUCKY, IOWA AND KANSAS, OVER THE ROUTES AND BETWEEN THE POINTS PARTICULARLY DESCRIBED IN THE APPLICATION.

ST. LOUIS, MISSOURI,

December 4, 1935. 10:00 a. m.

Before F. McM. WOODROW, Examiner.

Met pursuant to notice.

Appearances

Meyer E. Aronoff, 369 Paul Brown Building, St. Louis, Missouri, appearing for applicant.

C. E. Conner, 1409 South Eighth Street, St. Louis, Missouri, appearing for applicant.

M. G. Roberts and William W. Dalton, Frisco Building, St. Louis, Missouri, appearing for J. M. King and John G. Lonsdale, Trustees, St. Louis-San Francisco Railway Company.

J. H. Miller, Wabash Railway, St. Louis, Missouri, appearing for Southwestern Freight Bureau, St. Louis, Missouri, and Illinois Freight Association.

R. J. Williams and George W. Holmes, 1810 Missouri Pacific Building, St. Louis, Missouri, appearing for Missouri Pacific Railroad (Guy A. Thompson, Trustee).

B. W. LaTourette, 314 North Broadway, St. Louis, Missouri, appearing for Be-Mac Transport Company, Inc., et al.

Kenneth Teasdale, 314 North Broadway, St. Louis, Missouri, appearing for Transamerican Freight Lines, Inc.

A. F. Versen, 4503 South Kingshighway, St. Louis, Missouri, appearing for Toedebusch Transfer, Inc.

E. G. Minor, 1026 South Eleventh Street, St. Louis, Missouri, appearing for Western Trucking Company, Inc.

David Axelrod, 910 South Michigan Avenue, Chicago, Illinois, appearing for Hayes Transfer & Storage Company.

J. H. Wright, Illinois Central Railroad, Chicago, Illinois, appearing for Illinois Freight Association Lines.

124

Proceedings

Exam. WOODROW. Come to order, gentlemen. The Interstate Commerce Commission has set for hearing today Docket No. MC 13853, the application of N. E. Rosenblum, Inc., individual, doing business as N. E. Rosenblum Truck Lines, 1125 South Broadway, St. Louis, Missouri, for a certificate of public convenience and necessity, or permit, Form B. M. C.-A, authorizing operation as a common or contract carrier by motor vehicle in the transportation of commodities, generally, in interstate commerce, in the States of Illinois, Missouri, Indiana, Kentucky, Iowa, and Kansas, over 24 specified routes as attached to the application.

Who appears for the applicant?

Mr. ARONOFF. Meyer E. Aronoff, appearing for the applicant.

Mr. CONNER. C. E. Conner, appearing for the applicant.

Exam. WOODROW. Are there any protestants?

Mr. MILLER. M. G. Roberts and William W. Dalton, George W. Holmes, and J. H. Miller, appearing for Southwestern Freight Bureau, and the Illinois Freight Association.

Mr. LATOURETTE. B. W. LaTourette, 314 North Broadway, St. Louis, Missouri, appearing for Be-Mac Transport Company, Inc.; Anderson, Motor Service Company; Brashear Freight Lines; Chicago-St. Louis Transfer Company; Consolidated Forwarding Company, Inc.; Decatur Cartage Company; Highway Merchandise Carriers, Inc.; Mounty City Forwarding Company; Nighthawk Freight Service; Peoria Cartage Company, Inc.; Plaza Express Company; St. Louis Forwarding Company; Viking Freight Company; and Hussman-Roper Freight Lines, Inc., protestants.

Mr. VERSEN. A. F. Versen, 4503 South Kingshighway, St. Louis, Missouri, appearing for Toedebusch Transfer, Inc.

Mr. MINOR. E. G. Minor, 1026 South 11th Street, St. Louis, Missouri, appearing for Western Trucking Company.

Mr. AXELROD. David Axelrod, appearing for Hayes Transfer & Storage Company.

Exam. WOODROW. Are there any interveners? (No response.)

Exam. WOODROW. The Interstate Commerce Commission set three cases for hearing today. Two were to be heard by the Examiner, and one to be heard by Joint Board No. 135. It has been agreed to proceed with the hearing of the Joint Board case, Docket No. MC-74145.

However, in view of the fact that counsel for the applicant has stated to the Examiner that he desires to make a statement that will limit the issues as presented in his application, and that this statement would be a convenience to some of the protestants, at this time counsel may make that statement, and the case will be heard immediately upon the completion of the Joint Board hearing.

126 Mr. ARONOFF. Mr. Examiner, on behalf of N. E. Rosenblum, doing business as N. E. Rosenblum Truck Lines, whereas, his application No. MC 13853 indicates a total of 24 routes, I wish to state at this time that Mr. Rosenblum will amend his application by abandoning route No. 16, between St. Louis, Missouri, and Cincinnati, Ohio, via Richmond, Indiana, and Dayton, Ohio; Route No. 17, between St. Louis, Missouri, and Cincinnati, Ohio, over U. S. Highway 50; Route No. 18, between St. Louis, Missouri, and Cincinnati, Ohio, via Louisville, Kentucky, and Seymour, Indiana; Route No. 19, between St. Louis, Missouri, and Louisville, Kentucky; Route No. 20, between St. Louis, Missouri, and Des Moines, Iowa; Route No. 21, between St. Louis, Missouri, and Kansas City, Missouri; Route No. 22, between St. Louis, Missouri, and Mexico, Missouri, via Kingdom, Missouri; Route No. 23, between St. Louis, Missouri, and Mexico, Missouri, over U. S. Highways 40 and 54, and Missouri Highway 19; route No. 24, between St. Louis, Missouri, and Oklahoma City, Oklahoma, leaving for the consideration of this Board the first 15 routes indicated in the application.

Exam. WOODROW. Is counsel willing at this time to give any further information with respect to this application? The regular form was not filed. The so-called short form was used, and if there is any further information that you can give at this time, protestants no doubt will appreciate it.

127 Mr. ARONOFF. I can only make the statement, Mr. Examiner, that we expect to prove the applicant's right to grandfather clause rights for routes Nos. 1 to 15 as a contract carrier. By that I mean, that I expect to prove that prior to July 1, 1935, he was the owner of equipment under his sole control and operation; that this equipment was used under contract arrangements to haul general commodities between points listed in those first 15 routes; that he has been in continuous operation from that time on to the present time.

Exam. WOODROW. As a contract carrier?

Mr. ARONOFF. As a contract carrier.

Exam. WOODROW. And he desires a permit—

Mr. ARONOFF. He desires a permit as such.

Exam. WOODROW (continuing). Under the grandfather clause?

Mr. ARONOFF. That is right.

Exam. WOODROW. Have you any contracts that you could submit at this time? None were submitted with your application.

Mr. ARONOFF. No; none that I can submit at this time.

Mr. DALTON. Do I understand then, that your application as it stands at this time will limit your claims to the first 15 routes, and those alone?

Mr. ARONOFF. That is right.

Mr. DALTON. Thank you.

128 Exam. WOODROW. If there is nothing further at this time, this hearing will be recessed until the close of the hearing now being conducted by Joint Board No. 135.

(Whereupon, at 10:10 a. m., adjourned to 5:30 p. m.)

AFTERNOON SESSION, 5:30 P. M.

Exam. WOODROW. This morning the case of N. E. Rosenblum, Docket No. MC 13853, was called and the appearances were entered. Joint Board No. 135 having completed its hearing in the case which was assigned for it, we will now proceed with the hearing in this case.

A plicant may proceed.

Mr. ARONOFF. If the Examiner please, inasmuch as it is now after 5:30, I would like to request that the Rosenblum hearing be set for sometime tomorrow morning at your discretion. I, of course, have not had an opportunity to go into this Rosenblum matter. I was working on the other one, and for that reason I would like to ask that this be continued until tomorrow.

Exam. WOODROW. Gentlemen, it was the Examiner's thought that we would have a night hearing to complete this case, but probably we will expedite the hearing if we take a recess until 9:00 o'clock tomorrow morning. That will be done.

(At 5:35 p. m., December 4th, 1936, adjourned to 9:00 a. m., December 5, 1936.)

129 St. Louis, Missouri, December 5, 1936.

Before F. McM. WOODROW, Examiner.

Hearing resumed at 9:00 o'clock a. m.

Appearances as heretofore noted.

PROCEEDINGS

Exam. WOODROW. Come to order, gentlemen. You may proceed.

Mr. ARONOFF. Mr. Rosenblum,

N. E. ROSENBLUM was sworn and testified as follows:

Direct examination by Mr. ARONOFF:

Q. State your name.

A. N. E. Rosenblum.

Q. Where do you live, Mr. Rosenblum?

A. 5852 Maffitt.

Q. In this city?

A. Yes; St. Louis, Missouri.

Q. What business are you in?

A. I am in the trucking business.

Q. How long have you been in the trucking business?

A. Since around the early part of the year 1934.

Q. Do you own any equipment?

120 A. Yes.

Q. When did you buy your first piece of equipment?

A. Well, I bought my first tractor, I think, in the latter part of 1933; my first trailer in the early part of 1934.

Mr. ARONOFF. Mark this applicant's exhibit 1 for identification, and mark this applicant's exhibit No. 2 for application.

(Applicant's exhibits 1 and 2 identified.)

By Mr. ARONOFF:

Mr. Rosenblum, I will show you a paper marked applicant's exhibit 1 for identification.

A. Yes.

Mr. ARONOFF. Just a moment. I will offer this in evidence.

Mr. LATOURETTE. We object to that exhibit on the ground it does not show any ownership or title. It seems to be only a bill of sale.

Exam. WOODROW. The objection will be noted. It will be received.

(Applicant's exhibit 1, witness Rosenblum, received in evidence.)

By Mr. ARONOFF:

Q. Tell us what that is, Mr. Rosenblum.

A. That is an exact copy of the purchase of a used tractor for 400 dollars cash.

Q. Is that your tractor?

A. Absolutely.

131 Q. I will show you applicant's exhibit 2 for identification, and ask you what that is.

A. That is a title for a Fruehauf trailer, 1932 model.

Q. Is that the trailer you used in connection with the Chevrolet truck?

A. Yes; I still have this trailer.

Q. What kind of trailer is that?

A. Freuhauf.

Q. Insulated?

A. No, sir. It is a van type.

Q. A van type?

A. Yes.

By Exam. WOODROW:

Q. Why is it you have not got the title for the tractor?

A. I can explain that. I traded that tractor in once, and the successive one to that one in. You see, these tractors do not last long. I could furnish a title for the last one I have, but I could not furnish it for the others. When you trade it in, you relinquish the title.

Mr. ARONOFF. Mr. Examiner, that exhibit is put in to show when the first equipment was purchased. He no longer has this equipment.

The WITNESS. Not the tractor, no, sir.

Mr. ARONOFF. I want to offer in evidence applicant's exhibit No. 2.

132 Mr. LATOURETTE. The same objection as to exhibit No. 1.

Exam. WOODROW. It will be received.

(Applicant's exhibit 2, witness Rosenblum received in evidence.)

By Mr. ARONOFF:

Q. That was the first complete piece of equipment you had?

A. Yes, sir.

Q. Did you have an office or terminal?

A. I had desk space at 1125 South Broadway. In fact, I still retain that to this day.

Q. What is at 1125 South Broadway?

A. Well, it is partitioned off from a tire store, where the back half and the side is partitioned off with a separate door for a side wall entrance, and in there, the Midwest Oil Company had their offices, and I had desk space.

Q. Are there terminal facilities there?

A. There are, but I did not have any.

Q. You do not use those facilities?

A. No, sir.

Q. You just use that as your office?

A. Yes.

Q. Do you have your own telephone there?

A. Yes.

Q. Do you still have that number?

A. Yes.

133 Q. Talk loud enough so the reporter can hear you.

A. Yes; I do.

Q. You say you started operations in April 1934?

A. Yes, sir.

Q. Did you employ anyone?

A. Yes; a driver, or helper, you might say; as I was on the truck at that time; all of the time.

Q. You were on the truck and so was this driver, or helper?

A. Yes; either way you want to call it.

Q. Who did you do hauling for?

A. Most any reputable freight line between here and Chicago.

Q. Will you mention the names of some of the freight lines that you did business with?

A. Yes. Weintz Trucking Company. Transamerican—

Mr. LA TOURETTE. How do you spell that Weintz?

The WITNESS. W-e-i-n-t-z.

By Mr. ARONOFF:

Q. Who else?

A. Transamerican; Mound City Forwarding; Brashear; Illmo; Highway Merchandise Carriers; Viking. I can't remember the others.

Q. All right, Mr. Rosenblum.

A. Chicago-St. Louis Transfer Company.

Q. Did you purchase any other equipment?

A. Yes, sir.

Q. When?

134 A. Well, I purchased a tractor, I think, around September 1934, and had a trailer built for that tractor to pull in the latter part of October 1934.

Mr. ARONOFF. Mark this applicant's exhibit 3, and mark this one 4.

(Applicant's exhibits 3 and 4 identified.)

Mr. ARONOFF. I offer these in evidence.

Mr. LA TOURETTE. The same objection to exhibit No. 3, as to exhibit 1. It appears to be just a bill of sale. There is not any evidence of title.

Mr. ARONOFF. I want to offer applicant's exhibits Nos. 3 and 4 in evidence, if the Examiner please.

Exam. WOODROW. They will be received. Counsel's objection will be noted of record.

(Applicant's exhibits Nos. 3 and 4, witness Rosenblum, received in evidence.)

By Mr. ARONOFF:

Q. Now, Mr. Rosenblum, will you look at applicant's exhibits Nos. 3 and 4, and tell us—first, tell us what applicant's exhibit 3 is.

A. That is a bill of sale of a truck which I purchased from the Schnure Chevrolet Company, Chevrolet chassis and cab tractor. I traded in a 1930 Chevrolet car for \$184.

Q. What date was that?

A. 10/31—that must be October 31st.

Q. What year?

135 A. 1934.

Q. 1934.

A. Yes. I paid the man \$410 in cash, paying in full for the tractor, which was mine.

Q. Now, what is this applicant's exhibit No. 4?

A. That is a Baker trailer which I bought and paid for in cash.

Q. Was this the trailer that went——

A. I have this same trailer—I am using it every day.

Q. At that time did you use it in conjunction with the Chevrolet?

A. Yes.

Q. The Chevrolet tractor?

A. I rode with it about half of the time, between the two of them. I would meet them enroute, and change, and do everything else to operate the business.

Q. So, you hired another——

A. Driver or helper.

Q. — driver.

A. I sometimes even had two men on the one truck.

Q. Mr. Rosenblum, at any time before July 1, 1935——

A. Yes.

Q. — did you have in addition to these two complete units, any other equipment?

A. Yes, sir.

136 Q. What other equipment did you have?

A. I leased a complete unit from a party by the name of A. Levin.

Q. What do you mean by "complete unit"?

A. Well, I mean a complete tractor and trailer, the whole outfit. The reason I said that was, I did not want anybody to think it was just a tractor, without a trailer, or the trailer without the tractor.

Q. What was your leasing arrangement?

A. Well, the leasing arrangement——

Mr. LATOURETTE. Just a minute. Was it a written lease, or a verbal lease?

The WITNESS. A verbal lease.

By Mr. ARONOFF:

Q. Under what arrangement did you lease that equipment?

A. That I was to operate it; take care of it; buy the gasoline, the tires, the oil; hire the drivers; keep it in repair; and take care of it like I did my other trucks.

Q. Was this equipment under your complete control?

A. Yes, sir; I am pretty sure it was.

Q. Do you still have it?

A. Yes.

Mr. LATOURETTE. What was the answer?

The WITNESS. Yes.

By Mr. ARONOFF:

Q. What do you pay for this equipment?

137 A. I pay certain percentage of the net earnings.

Q. From this equipment?

A. Yes, sir.

Q. How often do you make settlements?

A. Weekly.

Q. Now, then, up to July 1, 1935, did you ever own, or lease, or contract for, any other equipment?

A. No, sir; only in very rare instances.

Q. You mean by that, that occasionally you had to hire some additional trucks?

A. Yes.

Q. When?

A. When I had loads I had contracted for, and I did not want to fall down on, I possibly brought somebody else in the picture, and gave him the full revenue, just to do what I agreed to do.

Q. So I am to understand then that up to July 1, 1935, you owned two complete units?

A. Yes.

Q. Consisting of two tractors and two trailers?

A. Yes.

Q. And that you leased and completely controlled one additional complete unit?

A. That is right.

138 Q. With these three pieces of equipment, you did hauling for the various companies you mentioned?

A. And other ones I can't remember offhand; yes, sir.

Q. Now, you signed and filed the alternate form of application for either a permit or a certificate?

A. Yes, sir.

Q. You did?

A. I did.

Q. And did you have prepared a schedule of routes?

A. Yes, sir.

Q. Now, that schedule contained 24 routes, Mr. Rosenblum?

A. That is right.

Q. It is our understanding that the last 8 were to be withdrawn from your application, as you do not care to have any permit or certificate to operate over those routes now?

A. That is right.

Q. Will you refer to those routes, the first 15?

A. Yes.

Q. Tell us what routes you used before July 1, 1935, through July 1, 1935?

Exam. WOODROW. Have you a map, so we can follow this?

Mr. ARONOFF. Just a moment. If the Examiner please, I will also supply those maps, in accordance with the arrangements made in that other case. I would like to know just how long, how many days I am to be given.

Exam. WOODROW. Of course, the other case has not any-
139 thing to do with this case.

Mr. ARONOFF. That is right.

Exam. WOODROW. I am sorry that you have not the maps. Inasmuch as you have not, you will be given five days, and the maps will contain the marked routes, the routes will be numbered, and the routes placed upon the maps in accordance with the testimony.

Mr. ARONOFF. Very well.

By Mr. ARONOFF:

Q. Now, Mr. Rosenblum, will you look at that route list, and tell us which routes you used prior to, and on July 1, and shortly thereafter?

A. Well, I would say offhanded I used all of these routes.

Exam. WOODROW. Well, we do not want—what do you mean by “offhanded”?

The WITNESS. I say that, unless you want me to read them. Shall we read them?

By Mr. ARONOFF:

Q. Go ahead.

A. Route 1; I used that route very regular.

Q. Did you say, very regular?

A. Yes.

Q. That is between—

Mr. LATOURETTE. I did not understand whether that was “regular” or “irregular.”

The WITNESS. Very regular. That is 66 to Chicago.

Mr. LATOURETTE. Mr. Examiner, we object. This is the
140 same type of testimony as was elicited yesterday, with

respect to frequency of schedules, and the term "very regular" is indefinite. I do not know what is meant by that.

Exam. WOODROW. Please be specific. State just what you did, so we can all understand it, please.

By Mr. ARONOFF:

Q. Can you, Mr. Rosenblum, tell us how often your trucks used Route No. 1 between St. Louis and Chicago and Highway 66.

Mr. LATOURETTE. When?

Mr. ARONOFF. On July 1, 1935, shortly before and shortly after.

The WITNESS. How often?

Mr. ARONOFF. Yes.

The WITNESS. I would say that one or the other of my trucks make it practically every day.

By Mr. ARONOFF:

Q. Now, refer to Route No. 2.

A. Yes.

Q. Between St. Louis and Chicago.

A. Yes.

Q. I will withdraw it. I will put it this way: St. Louis to junction with Illinois Route No. 48 west of Raymond on U. S. 66; then Illinois 48 to Decatur, Illinois; then U. S. 51 to Bloomington, Illinois; then U. S. 66 to Chicago, Illinois, and return.

141 Q. How often did you use that route?

A. Almost daily.

Q. Refer to Route No. 3.

A. Yes.

Q. Between St. Louis, Missouri and Vandalia on U. S. Highway 40; then U. S. Highway 51 to Bloomington; then U. S. Highway 66 to Chicago and return.

A. I would say that I used this route on an average of twice a week, possibly a little more often, but I would not want to say.

Q. At least twice a week?

A. At least twice a week.

Q. Refer to route No. 4.

A. Yes.

Q. From St. Louis to Effingham on U. S. Highway 40; then U. S. Highway 45 to Chicago and return.

A. About the same as route No. 3, possibly twice a week.

Mr. LATOURETTE. I did not hear that.

The WITNESS. About the same as route No. 3, possibly twice a week.

By Mr. ARONOFF:

Q. Twice a week.

A. Yes.

Q. Route No. 5, from St. Louis to Marshall, Illinois, on U. S. 40; then, Illinois No. 1 to Chicago and return.

A. About the same as the other two routes, 3 and 4; 142 about twice a week.

Q. Route No. 6, from St. Louis, Missouri, to Vandalia, Illinois, on Highway 40; thence U. S. 51 to LaSalle, Illinois; then U. S. 6 to Chicago, Illinois, and return.

A. About once a week.

Q. About once a week?

A. Yes, sir; that is up to Vandalia. That is nearly daily, but when we get up here to this 51 (indicating) and 6, there is the once-a-week part. I don't know whether we can break that up.

Q. In other words, you use part of that route daily?

A. Yes.

Q. But the intermediate points you go off to—

A. That is right.

Q. —are the ones you may occasionally call on?

A. You see, all of these are 40 to different points. Vandalia is the first point. Then there is Effingham, and then there is Marshall.

Q. Yes.

A. That is on one route.

Q. Take route No. 7, from St. Louis to Jacksonville on U. S. 57; then, U. S. 36 to Springfield; then U. S. 56 to Chicago and return.

A. 67 and 36 about once a week; then 66 out of Springfield daily, practically. That brings us back on the same route 143 as No. 1.

Q. So, on route No. 7, the difference is that 67 and 36—

A. Yes.

Q. —you use those particular routes once a week?

A. That is right.

Q. This, of course, is all back around July 1, 1935?

A. Yes.

Q. Around that period?

A. That is right; yes, sir.

Q. Take Route No. 8.

A. Yes.

Q. From St. Louis, Missouri, to Springfield, Illinois, on Illinois Highway 4; then Illinois 24 to Peoria; then Illinois 29 to junction with U. S. 6; then U. S. 6 to Chicago.

A. Possibly twice a month.

Q. Possibly twice a month.

A. Yes, sir; on an average, I would say; sometimes more, sometimes less. It will average twice a month.

Q. Now, take Route 9.

A. Yes.

Q. From St. Louis, Missouri, to Joliet, Illinois, on Highway 66; then U. S. Highway 30 to Aurora; then U. S. 34 to Chicago and return.

A. 66, that is the regular route. The points on 30 and 34 are the intermediate points I would be going through. They
144 would be twice a month possibly.

Q. Possibly twice a month.

A. Yes, sir.

Q. The only point on that route that you use daily—

A. Is over route—

Q. Is the part which contains Route 66?

A. Yes.

Q. Route No. 10, St. Louis, Missouri, to Lincoln, Illinois, on Highway 66; then, Illinois Highway 121 to junction with Illinois 164; then Illinois 164 to Peoria, Illinois; then U. S. Highway 24 to Chenoa; then U. S. 66 to Chicago, Illinois, and return.

A. Yes. Lincoln is on 66. That is the heavy route. Then, as to 121 and 164, and 24, those would be used about once a week. Then, when we get to Chenoa, that is on the daily operation, on 66.

Q. Take Route No. 11.

A. Yes.

Q. Route No. 11, from St. Louis, Missouri, to Bloomington, Illinois, on U. S. Highway 66; then Illinois No. 9 to Morton, Illinois; then U. S. Highway No. 150 to Peoria; then U. S. 24 to Chenoa; then U. S. 66 to Chicago and return.

A. No. 66 is the regular route. As to Route No. 9, to Morton, 150 to Peoria, 24 to Chenoa, those were possibly used once every
145 regular. Out of Chenoa to Chicago on 56, that is

Q. Take Route No. 12.

A. That is from St. Louis to Vandalia via Route 40; thence to Decatur—

Q. Thence on Illinois 121?

Mr. LATOURETTE. What highway, from Vandalia to Decatur?
The WITNESS. I think that is 51.

By Exam. WOODROW:

Q. Do you know?

By Mr. ARONOFF:

Q. You mean, you go to Decatur the same as on route No. 3?

A. Could I see that map?

Exam. WOODROW. Yes.

The WITNESS. Yes, that is 51.

By Mr. ARONOFF:

Q. 51 from where?

A. 51 from Vandalia to Decatur, right here (indicating).

Q. You go from Vandalia to Decatur on 51; then from Decatur on Illinois Highway 121 to Morton?

A. Yes.

Q. Then, on U. S. Highway 150 to Peoria?

A. Yes.

Q. Then, U. S. Highway 24 to Chenoa?

A. That is right.

Q. Then U. S. 66 to Chicago?

A. Yes.

Q. How often do you use that route?

146 A. Well, 40 to Vandalia is a regular route. 51 to Decatur is very regular. That is a good direct route with new pavement. 121 to Morton, and 150 to Peoria, I would say would be twice weekly. Also 24 to Chenoa would be twice weekly, perhaps.

Mr. LATOURETTE. What do you mean by "perhaps"?

The WITNESS. Well, twice weekly. I am just averaging this, because I do not want to make it too little or too much.

By Mr. ARONOFF:

Q. Take Route No. 13.

A. Yes.

Q. From St. Louis to Joliet on U. S. 66; then U. S. 30 to Aurora; then U. S. 330 to Elgin; then U. S. 20 to Chicago.

A. 66 to Joliet is a regular route. 30 to Aurora, 330 to Elgin, and 20 to Chicago, I would say would be used possibly once every two weeks.

Q. Take Route No. 14, from St. Louis to Effingham on U. S. 40; then U. S. 45 to junction with Illinois No. 172; then Illinois 172 to junction with Illinois 20; then Illinois 20 to Waukegan, Illinois, and return.

A. Well, on this route No. 40 is regular. No. 45 is regular. That is that same route we take direct to Chicago, Route 45.

Exam. WOODROW. Now, will you explain for the record, please, what you mean when you say "regular"?

The WITNESS. Well, No. 45 is one that I used more often than 172 or 20.

By Mr. ARONOFF:

Q. What do you mean by "regular"? That is what the Examiner wants to know.

A. Sir?

Mr. DALTON. I think that is still relative. He says he uses one more than the other.

The WITNESS. Here is the thing; here is the point I am trying to show you, that these intermediate points, these off-the-highway routes are the ones that I made with less regularity than I did these direct routes.

Mr. LATOURETTE. What do you mean by "off-the-highway" points?

The WITNESS. I mean, off this direct route to Chicago, this direct to Chicago highway. For instance, on Nos. 48 and 45, there are a lot of towns I serve there that I have to go off the highways for.

By Mr. ARONOFF:

Q. You mean, go off of the highway to Chicago?

A. In most cases I was retracing my steps back to the highway.

Mr. LATOURETTE. You mean, you are serving off-the-route points?

The WITNESS. These routes like 45—well, to you it may not seem that way, but 45 is a direct route to Chicago, off of Highway 40. To me, when I went on 172, I just felt like I was kind of off of the route. It is a paved highway, and all that sort of thing.

By Exam. WOODROW:

Q. Did you leave St. Louis with the fixed intention of going to Chicago over the route designated as route No. 14?

A. Yes, sir. That is where the merchandise went, part of it.

Q. And how often did you do that?

A. Well, that is strictly up to whatever the load might have been.

Q. We are trying to get the facts, sir. We do not know what the load might have been.

A. I see.

Q. How often did you leave St. Louis and traverse the route which you designate as route No. 14, prior to July 1, 1935, and subsequent thereto?

A. I used this route No. 40—

Mr. ARONOFF. Mr. Rosenblum, we know what route No. 14 is.

By Mr. ARONOFF:

Q. Just tell the Examiner how often you used that complete route, as it is described on your schedule.

A. The complete route?

Q. The complete route.

A. Now I have the idea.

Q. Yes.

A. All right. Possibly once every 10 days.

149 By Exam. WOODBROW:

Q. Do you know how often you used it?

A. Once every 10 days.

Q. Then, you used it once every 10 days, and it was not a question of possibly?

A. Yes.

Exam. WOODBROW. All right.

By Mr. ARONOFF:

Q. Now, Mr. Rosenblum, refer to route No. 15, which is designated as between St. Louis, Missouri, to junction with Illinois 48 on Highway 66—

A. Yes.

Q. Then on Illinois 48 to Onarga; then on U. S. 45 to Kankakee; then on Illinois 49 to Chicago and return. How often around July 1, 1935, did you use route No. 15?

A. I used that route in its entirety about once a week.

Q. Once a week?

A. Yes, in its entirety.

Q. Now, getting to a later date, let us say in August or September, would you use any of these routes oftener than what you have testified to?

A. You mean after July 1, 1935?

Mr. LATOURETTE. You mean, would he, or did he?

Mr. ARONOFF. Did he.

Mr. LATOURETTE. The question says "would be."

By Mr. ARONOFF:

Q. Did you in August, 1935, or September, or around that time—

150 A. Yes.

Q. Use these routes oftener than you have testified you used them in July?

A. No; about the same.

Q. About the same.

A. Yes.

Q. Did you at any time after July 1, 1935, use these routes oftener?

A. Yes, sir.

Q. When did you start to use them oftener?

A. Around February or March, 1936.

Q. February or March, 1936?

A. Yes.

Q. Until that time you used them about the way you just completed testifying?

A. Yes.

Q. During all of this time, were these truckers—I mean these truck lines, the ones that you were hauling equipment for?

A. Hauling freight for, you mean?

Q. Yes. Do not nod your head.

A. That is not a complete question, I do not think.

Q. I will frame it differently. Withdraw the question.

Mr. Rosenblum, prior to July 1, 1935, on through the balance of 1935, and into the early part of 1936, you used these routes—

151 A. Yes sir.

Q. In the way you testified as to the regularity with which you went over them?

A. That is right.

Q. You were hauling freight for the various truck lines that you mentioned previously?

A. That is right.

Q. Do you recall, or do you know just what type of commodities you were hauling?

A. Just about everything.

Q. You did not confine yourself to any particular type of commodity?

A. No, sir.

Q. Did you file a schedule of minimum rates on commodities?

A. Yes, sir.

Q. Do you recall what that schedule number was?

A. It is my M. F., I. C. C. No. 1.

Mr. ARONOFF. Mr. Examiner, may I incorporate that into this record just by reference, as it is already on file with the Interstate Commerce Commission?

Exam. WOODROW. No. If you want it in the record, you will have to furnish a copy of it.

Mr. ARONOFF. Very well. Mark this applicant's exhibit 5 for identification.

(Applicant's exhibit 5 identified.)

152 Mr. ARONOFF. I am submitting for the record, applicant's exhibit No. 5.

Exam. WOODROW. It will be received.

(Applicant's exhibit 5, witness Rosenblum received in evidence.)

Mr. ARONOFF. This is a schedule of minimum rates on commodities listed therein, designated as M. F., I. C. C. No. 1.

Mr. DALTON. Just a moment.

Exam. WOODROW. Off the record.

(Discussion outside the record.)

Mr. MILLER. This schedule names rates on commodities between points on routes that have heretofore been withdrawn by the applicant?

Mr. ARONOFF. That is right. Mr. Examiner, there will be a new schedule filed in compliance with whatever order is made, because there have been shipments made over these other routes and the applicant could rights over these other routes which he is abandoning. He is not abandoning them because he has not used them, but because he just does not want to continue using them. That is why the rates are in there on those routes.

Mr. DALTON. It is objectionable for that reason. It also contains a lot of irrelevant material. There is no way of designating—

Exam. WOODROW. The Examiner has received it. You
153 may proceed.

Mr. DALTON. Very well.

Mr. ARONOFF. What was the last question and answer?

(The record was read as above recorded.)

By Mr. ARONOFF:

Q. Now, did you ever haul to any points outside of those mentioned in your testimony?

A. Just what dates are you referring to?

Q. Back in July, 1935, and around that time.

A. Yes.

Q. You did?

A. Yes.

Q. But you are not claiming any rights for those under the grandfather clause?

A. No, sir.

By Exam. WOODROW:

Q. What is the distance over these routes to Chicago?

A. You mean the direct routes, Mr. Examiner?

Q. Just pick out one route, and tell me what the distance is; approximately how many miles?

A. Well, on this route No. 1, St. Louis, Missouri, to Chicago via U. S. 66 and return, I think that would be about 295 miles to Chicago via that route.

Q. It is about 600 miles round trip?

A. That is right, on the direct routes.

Q. How long does it take you to make it?

154 A. How long does it take us to make the 300 miles?

Q. Yes. When you leave St. Louis, what time do you leave St. Louis, as a rule?

A. Well, as a rule, shortly after we get the truck loaded. That might be one, two, or three o'clock in the afternoon. Generally speaking, in the afternoon.

Q. Assume you left at six o'clock in the afternoon.

A. Yes.

Q. When would you get to Chicago?

A. Between 10 and 12 hours after that.

Q. You can take a truck and average 30 miles an hour?

A. That is right.

Q. Including stops?

A. That is right.

Q. Well, when would you return with that truck?

A. It is like you say, if we would leave at 6:00 in the evening, we would be there first thing in the morning, and unload first thing in the morning. Then, we would get a load during the day, and start out that evening.

Q. Then it would take you 36 hours to make a round trip, as a rule?

A. That is right.

Q. You had two trucks?

A. I had two and three trucks.

Q. You had three trucks up until when?

155 A. I had two trucks up until June, 1935, and three thereafter.

Q. Did you ever come back empty?

A. I could say, in all my operations, possibly two times in the last three years. That would be over a holiday, or just prior to a holiday, when the drivers and myself would want to be home, so we would come back empty.

Q. How would it be possible with two trucks, to operate over route No. 1 daily, even if you did not operate over any other routes?

A. Well, I would either be coming or going.

Q. Then the day you went over one of these other routes you would not be on route No. 1, would you?

A. No, unless—there are many times when I crossed from one route to the other at these points, to make a town, instead of coming back and following the route out entirely. I would go straight ahead on the connecting route, and then possibly—well,

sometimes we cut across there from Springfield to Decatur; so you see, I would be there on 66, and I would come across from Springfield to Decatur. Then, I would follow along on 48.

Exam. WOODROW. Are there any further questions?

By Mr. ARONOFF:

Q. You stated that among those truck lines you operated for was Trans-american Freight Lines?

A. What was that question?

Q. You stated, among those truck lines that you hauled 156 freight for, Transamerican Freight Lines was one of them?

A. Yes, sir.

Mr. ARONOFF. Mark this applicant's exhibit 6.

(Applicant's exhibit 6 identified.)

Exam. WOODROW. We will take a short recess.

(A short recess was taken.)

Mr. ARONOFF. What was the last question?

(The question was read.)

By Mr. ARONOFF:

Q. Mr. Rosenblum, I show you eight statements pinned together, marked applicant's exhibit 6.

A. Yes.

Q. Tell us what those statements are.

A. Well, those are semimonthly statements of any work I might have done for this line during the period mentioned here.

Q. That does not cover all the work you did?

A. Oh, no.

Q. You have other statements in addition to these?

A. Oh, yes.

Q. This statement shows, this first statement dated February 22, 1935, that it is for settlements between February 1st, and February 15th.

Mr. LATOURETTE. Just a moment, Mr. Examiner. The exhibit speaks for itself, as to dates and everything else.

Mr. ARONOFF. He may cross-examine him, I imagine, on the contents. I am examining him—

157 Exam. WOODROW. You may ask him about it in this way: you may ask him what the exhibit is, and put the exhibit in. You do not have to have him testify to what it contains. That will be in the record.

Mr. LATOURETTE. Have these been introduced in the record?

Mr. ARONOFF. Not yet.

Exam. WOODROW. He has identified the proposed exhibit.

Mr. MILLER. If the Examiner please, we want to object to the use of those exhibits, for this reason: the applicant, as we under-

stand it, has applied for a *for a* contract hauler's permit to operate interstate as a contract carrier under the Motor Carrier Act.

These purported exhibits here, if they are any evidence at all, are merely evidence of the fact this applicant transported freight for the Transamerican Freight Lines, under some sort of arrangement, over their routes, handling their shipments.

Exam. WOODROW. That was the purpose of introducing this proposed exhibit, to show that applicant performed this service for the Transamerican Freight Lines.

The objection will be overruled. It will be received.

Mr. MILLER. I object for the further reason that these exhibits also show the hauling of freight between points on routes which are not now covered by the application.

158 Mr. ARONOFF. Mr. Examiner, I cannot withdraw them from the statement. We are not claiming them. We admit we went over these routes, but we are not claiming them now.

Exam. WOODROW. The Examiner has ruled. You may proceed. (Applicant's exhibit 5, witness Rosenblum, received in evidence.)

By Mr. ARONOFF:

Q. Mr. Rosenblum, will you look at that exhibit, and just explain your business relationship with Transamerican Freight Lines?

A. I contracted to haul this freight for them, for these specified amounts shown on here, on the statements.

They take out of that amount, property damage and public liability insurance, and at a later date they itemize the deduction of the cargo insurance, so that the amounts shown there in the credit column, were reduced by those shown in the debit column.

Q. Now, referring to this first statement dated February 22, 1935, is that a settlement from the 1st of February to the 15th?

A. Yes, sir.

Q. Now, that first statement indicates that there was a movement from St. Louis to Chicago on February 1; from Chicago to St. Louis on February 2; from St. Louis to Chicago on February 4; from Chicago to St. Louis on February 5; from St. Louis to Chicago on February 12; and from Chicago to St. Louis
159 on February 13th?

A. Yes.

Q. Now, Mr. Rosenblum, I just want to ask you if that represents all the movements of your trucks made during that month of February 1935?

A. No, sir.

Q. What is that answer?

A. No, sir.

Q. You did other hauling for other concerns?

A. Yes. There are not two trucks working there on any one day. I would not have necessarily have used the trucks.

Q. Did any one of your other trucks make hauls between the same points during the same period?

A. Oh, yes.

Q. Now, I am looking at another statement dated March 23rd.

A. Yes.

Q. Would that be a settlement from the 1st to the 15th of March?

A. Yes. That would be the settlement. That would only be four loads there in 15 days, with three trucks.

Q. You mean that those four loads were made in 15 days with three trucks?

A. I mean, that just shows what work I did for them over that 15-day period.

Q. Did you work for anyone else during that 15-day period?

160 A. Yes, sir.

Q. Will you explain the deductions noted on the second page?

A. Well, there is a public liability insurance, and property damage insurance deduction for \$2.78.

Q. That is \$2.78?

A. Yes. There is a cargo deduction of \$6.

Q. What is this [indicating]?

A. That is an advance made the driver at Chicago, of \$10.

By Exam. WOODROW:

Q. Why was the deduction made for the insurance?

A. Because I paid for it.

Q. Did Transamerican Freight Lines have the policies?

A. Yes.

Q. In other words, they had policies for all truckers who were operating for them?

A. Well, I could not say that, sir. I imagine that they had a policy that included the possibility of hiring any contract truck, and that they had these trucks covered.

Q. When you worked for them, they required you to pay for the insurance which they had taken out for you?

A. Yes. They deducted that from my statement.

By Mr. ARONOFF:

Q. Now, Mr. Rosenblum, during this time did you carry any insurance policies of any kind and pay for them yourself?

A. Yes, sir.

161 Q. What kind of insurance did you carry?

A. Collision, turnover, fire, and theft.

Mr. LATOURETTE. Mr. Examiner, would not the policies be the best evidence?

By Mr. ARONOFF:

Q. Do you have the policies of July 1935?

A. No, sir; because I think they expire. I have the continued ones, the renewed ones. I have them.

Q. You have the renewed policies?

A. Yes.

Q. The current policies?

A. Yes.

Q. Now, I understand that when you make a shipment for Transamerican Freight Lines, the property damage and public liability insurance is deducted, and the cargo insurance is deducted?

A. That is right?

Q. But you pay your own collision, fire, theft, and turn-over insurance?

A. Yes, sir. That is to protect my own equipment.

Q. I see.

A. They are not interested in that.

Q. I show you a statement dated May 7th, being a settlement from April 16th to April 30th, which shows five trips either to or from Chicago.

A. Yes.

162 Q. I see a deduction on April 25th for claim E-588, in the sum of \$1.04.

A. Yes.

Q. What is that?

A. I could not tell you exactly what the item might have been.

Q. Well—

A. You see, they loaded and unloaded the trucks themselves, and sealed the trailers, but in spite of that, if there was any damage to any merchandise concealed or otherwise and I might have handled that merchandise, they laid it in my lap.

Q. Were not claims for damage to merchandise covered by this cargo insurance?

A. Well, at a later date—when the amounts were negligible, like that amount there, I said nothing, but at a later date, it so happened that one of my trucks turned over with a load of their cargo, and the total damage, I think, on the whole load was around \$11. That was for the whole turnover.

I did not make any complaint. I just wanted to know the details of just what the coverage is, how definite it is. I understand it is \$100 deductible.

Q. In other words, any damage——

A. Any damage——

Q. Up to \$100, you have to pay.

A. I have to pay.

Q. You have to pay that?

163 A. That is right.

Q. Under their policy?

A. That is right.

By Exam. WOODROW:

Q. What did the load consist of, this load that you turned over?

A. General merchandise.

Q. And the damage was only \$11?

A. That is right. That is the only damage I have had in over three years.

By Mr. ARONOFF:

Q. Now, turning to the seventh statement dated October 7th, 1935, you were still operating?

A. Yes.

Q. Doing work for the Transamerican Freight Lines?

A. Yes, sir.

Q. Do you recall how long you continued to haul freight for the Transamerican Freight Lines?

A. Up into this year; I imagine possibly May or June.

Q. Of this year?

A. Yes.

Mr. LATOURETTE. I cannot hear you.

By Mr. ARONOFF:

Q. Do you have settlement statements from other freight lines besides these?

A. No, sir.

Q. Can you tell why you have these, and do not have others?

A. Yes.

164 Q. Will you explain that to the Commission?

A. Yes. As to all of these other lines, for which I might have done any work, any hauling, when I delivered the loads to destination, if there were no exceptions, noted on the delivery receipts they gave me a check, paying for that particular contract.

Q. How was your arrangement with Transamerican Freight Lines, Mr. Rosenblum?

A. Transamerican Freight Lines had no set-up like that. However, with reference to these operators who had no funds of their own, they made exceptions to those rules.

Q. You mean, they advanced them money?

A. Yes.

Q. How did you settle with Transamerican Freight Lines?

A. On a semimonthly basis.

Q. Was that the only one you settled with on a semimonthly basis?

A. Yes, on a definite semimonthly basis; the only one.

By Exam. WOODROW:

Q. How does it happen in this first statement you were paid \$32.50 for a trip from St. Louis to Chicago, and also were paid \$32.50 for the return trip, but on the second statement you were paid \$30 from St. Louis to Chicago, and \$35 from Chicago to St. Louis?

By Mr. ARONOFF:

Q. Will you explain that to the Commission, Mr. Rosenblum?

165 A. Yes. My relations with Transamerican Freight Lines were so pleasant, that whenever the revenue of the load justified an increase, they gladly gave it to me.

Whenever the revenue did not justify it, I was willing to take less. There was never any difficulty about that, especially on this particular end of the line.

By Exam. WOODROW:

Q. What would they pay? Would they charter your equipment and give you \$32.50 for making the trip?

A. Do you want me to answer that?

Q. I asked the question, yes.

A. Well, I do not know whether you would call it a charter. I would say that they paid me \$32.50 for making the trip; yes, sir.

By Mr. ARONOFF:

Q. Now, the driver of that truck would be one of your men?

A. Yes, sir.

Q. If you had a through shipment from St. Louis to Chicago or from Chicago to St. Louis, with no intermediate drop-offs, did Transamerican Freight Line, or did any other line tell you how to go?

A. No.

Q. They did not instruct you how to go?

A. No, sir.

Q. You took whatever route you wanted to use?

A. That is right.

166 Q. Did you, prior to July 1935, register under any code of fair competition?

A. Yes, sir.

Q. Where did you make that registration?

A. In the Mart Building.

Q. In the Mart Building?

A. Yes.

Q. Do you recall when?

A. The latter part of 1934.

Q. Under what code did you register?

Mr. LATOURETTE. I object to the question; the registration would be the best evidence, Mr. Examiner.

By Mr. ARONOFF:

Q. Mr. Rosenblum, do you have the certificate of registration?

A. No, sir. I lost it, or misplaced it.

Q. Have you tried to replace it?

A. Yes, sir. We wrote to the American Trucking Association six months ago, and to date we have had no reply; that was at Washington.

Mr. ARONOFF. Mr. Examiner, I ask leave to procure a certified copy of that certificate, which is registered in Washington, and ask leave to file it at a later date.

Exam. WOODROW. Is there any objection to that?

Mr. LATOURETTE. Yes, Mr. Examiner. There may be some question about the certificate that counsel for protestants 167 would want to cross-examine on.

We will not have that opportunity, if permission is given to file this exhibit at a later date.

Mr. ARONOFF. That certificate would certainly speak for itself, and if it is objectionable on its face, I should imagine the Commission will also note that.

Exam. WOODROW. How long would it take you to furnish it?

Mr. ARONOFF. Well, I intend to write immediately and explain the importance of it. In fact, I will wire, and I hope to have a prompt reply.

We wrote for it quite sometime ago. Perhaps it is on account of conditions there which we know nothing about, that we did not receive a reply. If necessary, it may mean a trip up there.

Exam. WOODROW. You will be allowed to do that.

Mr. ARONOFF. Thank you.

By Exam. WOODROW:

Q. Do you remember what name that certificate was in?

A. It must have been in my own name because that is the only way I have ever operated, N. E. Rosenblum Truck Lines.

By Mr. ARONOFF:

Q. You have never operated under any other name since you started in business?

A. No, sir.

Q. You started in 1934?

A. Yes.

168 Q. Have you been in continuous operation ever since?

A. Yes, sir.

By Mr. CONNER:

Q. Mr. Rosenblum, you stated in your testimony that after February 1936, you had utilized the routes shown in your application more often than you did prior to that time, is that correct?

A. You say after February 1936?

Q. Yes.

A. Yes.

Q. Is it or is it not a fact that prior to February 1936, one or more of your trucks were operating over other routes, some of which you have abandoned in this proceeding?

A. Yes, sir.

Q. Now, is it or is it not a fact that by reason of that, you would not and could not have operated as often over the Chicago-St. Louis routes, as you did subsequent thereto?

A. What was that question, please?

Mr. CONNER. Read it.

(The question was read.)

A. Yes, sir.

By Mr. CONNER:

Q. After February 1936, to put it differently, you concentrated your operation entirely between Chicago and St. Louis over the routes for which you seek authority to operate?

A. Yes, sir.

169 Q. Now, I might ask you one more question: in discussing with the Examiner the difference in rates paid you for loads by Transamerican Freight Lines, would that indicate that you had in any manner permanently, or for any definite period of time, leased your equipment to that line?

A. I do not think so; no, sir.

Q. Did you at any time lease your equipment to them completely?

A. No, sir.

Q. Did you retain complete control over your equipment at all times?

A. Yes, sir.

Mr. CONNER. That is all.

Mr. ARONOFF. That is all.

Cross-examination by Mr. MILLER:

Q. Mr. Rosenblum, as I understand it, you filed the alternate form, the B. M. C.—A form?

A. Yes.

Q. Have you filed any other form with the Interstate Commerce Commission asking for a contract hauler's permit?

A. No, sir; I did not.

Q. You assert rights here to operate from St. Louis, Missouri, to Illinois points, and from Illinois points to St. Louis, Missouri.

Do you possess an interstate permit from the Missouri
170 Public Service Commission authorizing such operations as a contract hauler?

Mr. ARONOFF. I object to that question as immaterial.

Exam. WOODROW: The question may be answered.

Mr. ARONOFF. I just want my exception noted. Pardon me, but I would like to complete my objection.

Exam. WOODROW. Off the record.

(Discussion outside the record.)

Mr. ARONOFF. Read my last statement.

(The record was read.)

The WITNESS. Am I to answer now?

Mr. ARONOFF. Yes.

The WITNESS. No, I have none. As I understand it, it is not necessary.

By Mr. MILLER:

Q. So, up until this time, you have not applied to the Missouri Public Service Commission for a permit as a contract carrier?

A. No, sir.

Q. To operate interstate?

A. I have not.

Mr. MILLER. That is all.

By Mr. LATOURETTE:

Q. Mr. Rosenblum, you discussed the frequency of your schedules over route Nos. 1 to 15, inclusive.

A. Yes.

171 Q. Do you want to represent to this Commission that in view of your testimony that you only owned two trucks, and leased one, that you used the routes that you discussed as frequently as you did?

A. Yes; to the best of my knowledge. Yes, sir.

Q. To the best of your knowledge?

A. Yes, sir.

Q. Do you wish to represent to the Commission as a fact that you did operate over those routes on the schedule that you described in the record here this morning?

A. Yes, sir.

Q. As a matter of fact, it would be physically impossible, would it not, with two trucks and a leased truck, to operate the schedules you have described here for the business of almost 300 miles, from St. Louis to Chicago?

A. No, it would not.

Mr. LATOURETTE. That is all.

By Mr. MILLER:

Q. Mr. Rosenblum, were you here at the hearing of Mr. Shandalov's application, Mr. Shandalov doing business as Overnite Freight Service?

A. Yes.

Q. Are you associated with him in any way at that warehouse on South Broadway?

A. I use the terminal facilities there. That is not on South Broadway. That is 1409 South 8th Street.

172 Q. He filed an application for a common carrier certificate, did he not, Mr. Rosenblum?

A. That is the way I understand it; yes, sir.

Q. You are applying for a contract hauler's permit?

A. Yes, sir.

Q. Did you hear Mr. Conner's testimony in the Shandalov case as to the financial set-up of the company down there?

A. I think I heard the greater part of it; yes, sir.

Q. Namely that in the operations of the terminal, all the general expenses are prorated between yourself and William Shandalov on a tonnage basis?

A. That is right.

Q. And the bank account is in the name of Shandalov doing business as Overnite Freight Service?

A. That is correct.

Q. As to any other operations, other than those, other than those I have just mentioned, it is customary for the Overnite Freight Service, or William Shandalov, to pay in the first instance, bills for you, and then have a fiscal year settlement with you, is that correct?

A. Yes, sir; that is a common practice among terminals.

Q. That is the practice at your place?

A. Yes.

Q. One more question: is Truman E. Baulos included in that arrangement?

173 A. Yes. He also shares with us, part of the overhead expense of operating the terminal only.

By Exam. WOODROW:

Q. With reference to the method by which you conduct your business in performing services for these trucking companies, which you mentioned, is it the same, or practically the same as the method by which Mr. Shandalov is conducting his business?

A. Well, I do not know just what you are referring to. I will answer that question, if I can understand it.

Q. Well, you are associated in the trucking business there as far as headquarters go, is that true?

A. Well, we are operating out of one terminal; yes, sir.

Q. You prorate the expense?

A. Yes, sir; of the terminal.

Q. You haul for other trucking concerns, and so does he, does he not?

A. Well, since I have been associated with him in the terminal, I do not believe he does, for other trucking concerns.

Q. Well, what is your connection with the public? In other words, sir, describe the process or the method by which you obtain these shipments.

A. You mean at the present time?

Q. Well, prior to and subsequent to July 1, 1935.

A. Prior to July 1, 1935, I contracted only with the reputable trucking companies, up until about February of 1936.

174 Then, I secured some contracts with different shippers directly, and since that time I have increased my business; my business has automatically increased to where I no longer solicit any contracts from these other trucking companies.

Q. What do you do now?

A. Now I have sufficient business of my own to keep my trucks plenty busy.

Q. Where does that business come from?

A. Either out of St. Louis, East St. Louis, or Chicago.

By Mr. ARONOFF:

Q. Tell the Examiner who you have contracts with. Name some of your contracts.

A. Well, Swift & Company; St. Louis Independent Packing Company; Armour & Company; the Lehon Company; the Oppenheimer Company; Rival Packing Company; J. C. Klein, cheese importer, and many others.

By Exam. WOODROW:

Q. Have you filed those contracts with the Commission?

A. No, sir. I understand they have extended that time into February 1937. Whenever they ask for the filing of these contracts, I will immediately do so.

Q. How many of them would you say you had?

A. Between 10 and 13.

Q. Well, would you haul freight for anybody who offered it to you?

A. Only if I have got a contract with them.

175 Q. Do you ever haul half a truckload for one customer and half for another, or do you only haul full truckloads?

A. No. I haul part loads, half for one and half for another, and sometimes it is even more divided than that.

Q. Prior to July 1, 1935, and subsequent thereto, you performed work for other trucking companies?

A. That is right; yes, sir.

Q. You had no contracts with shippers?

A. No, sir. My practice has been that when I contracted with a trucking company, I would not take one pound of freight in my own right and, I might say, nobody has ever suspected of doing that, let alone caught me.

Exam. WOODROW. Are there any further questions?

By Mr. MILLER:

Q. Who is office manager down there, Mr. Rosenblum?

A. I am my own manager.

Q. Mr. Conner does not work for you?

A. He does rate work for me, because I will admit that I know little or nothing about rates.

Q. Are you charged in this distribution of expense on a tonnage basis, for any part of Mr. Conner's salary?

A. That leads us back to the operation of the terminal. Mr. Conner is an employee of Mr. Shandalov's.

He pays him. That is included in the terminal operation. I pay my share on a tonnage basis.

176 Q. Did you prepare your own application that was filed in this case?

A. I could not do that, as I said before.

Q. Who did it?

A. Mr. Conner.

Q. Did you hear him testify he also prepared Mr. Shandalov's application?

A. I understand that, as Mr. Conner knows Mr. Shandalov, and has known him before I did.

Q. Did you see Mr. Shandalov's application?

A. No, sir.

Q. Did you hear him testifying about it yesterday?

A. Well, I was present. I really cannot say. I was not in the room all of the time. I heard quite a bit.

Q. Did you take note of the fact that the routes which Mr. Shandalov had claimed as a common carrier, routes you have claimed as contract hauler routes, and are identical in every instance?

A. No; I didn't pay any attention to that.

Mr. MILLER. That is all.

Mr. LA TOURETTE. No further questions.

Mr. ARONOFF. That is all, Mr. Examiner.

By Mr. DALTON:

Q. Did I understand—you were present when Mr. Conner testified yesterday, were you not?

A. Like I said before, I was jumping around quite a bit.
177 I was in the room the biggest part of the day.

Q. He testified that there was one bank account. There was some evidence introduced on checks drawn from a common bank account.

A. That is right.

Q. Is that right?

A. Yes, sir.

Q. All at this same terminal?

A. All at this same terminal.

Q. Mr. Rosenblum, did you say you had examined Mr. Shandalov's application yesterday?

A. No, I didn't. I have never seen it.

Q. You never saw it?

A. I would not know much about it if I did see it.

Q. You were present at the hearing yesterday when that evidence was put on?

A. You mean the application?

Q. Yes.

A. Well, I was in the room. I might not—

Q. Does it not strike you as rather a coincidence that your routes are identical to Mr. Shandalov's routes?

A. Not necessarily.

Q. Well, could section 210 have anything to do with that?

A. I do not know what section that is.

Q. Section 210 of the Motor Carrier Act. You are not familiar with it?

A. No.

Mr. DALTON. That is all.

Mr. MILLER. You also——

The WITNESS. I would like to read it, whatever it is.

Mr. MILLER. Strike that. That is all.

Mr. ARONOFF. That is all.

Exam. WOODROW. We will take a short recess.

Mr. ARONOFF. We have finished, Mr. Examiner.

(A short recess was taken.)

Colloquy

Exam. WOODROW. The protestants may proceed.

Mr. MILLER. Mr. Examiner, we have nothing further in this case.

Mr. LATOURETTE. The protestants I represent have nothing further.

Exam. WOODROW. Do you gentlemen desire to brief the case?

Mr. LATOURETTE. The protestants I represent desire to file a brief, Mr. Examiner.

Mr. ARONOFF. I will file one, too.

Exam. WOODROW. There are two things to be furnished. Counsel for the applicant requested permission to file a map showing the routes marked. That will be furnished in five days.

Counsel for the applicant also requested permission to furnish a certificate——

179 Mr. ARONOFF. A certified copy.

Exam. WOODROW. A certified copy——

Mr. ARONOFF. Of an N. R. A. certificate.

Exam. WOODROW (continuing). Of an N. R. A. certificate.

Mr. ARONOFF. We will need a little longer time for that, Mr. Examiner.

Exam. WOODROW. Can that be done in 15 days?

Mr. ARONOFF. I hope so.

Exam. WOODROW. You will have 15 days to submit that for the record.

Mr. CONNER. How do you want that submitted, direct to the Commission?

Exam. WOODROW. Yes. Briefs will be due January 5th, 1937. If there is nothing further, this record is closed.

Mr. ARONOFF. Mr. Examiner, before this hearing is closed, I would like permission to withdraw the original exhibits for the

purpose of having photostatic copies made and replace the originals with photostatic copies. I will also supply the protestants with such copies.

Exam. WOODROW. If this permission is granted, can you have the copies made today and give them to the reporter before he leaves for Chicago?

Mr. ARONOFF. The photostatic copies and the originals will be returned to the reporter for comparison within the next 180 three hours, and then the photostatic copies filed with him.

Exam. WOODROW. With that understanding, and with the understanding that you will be held personally responsible for them, that may be permitted.

Mr. ARONOFF. Thank you very much.

Exam. WOODROW. Gentlemen, if there is nothing further, this hearing is closed.

(At 11:00 o'clock a. m., December 5, 1936, the hearing was closed.)

180-A *Exhibit No. 1*

East 1100.

Bridge 8075.

EAST ST. LOUIS, ILL., *December 11, 1933.*

STANDARD CHEVROLET CO.

1325 STATE STREET

DUPLICATE

N. E. ROSENBLUM.

1558 Goodfellow Avenue, St. Louis, Missouri.

All Bills Must Be Paid On or Before the 10th of the Month—Terms Net.

Used Chevrolet Truck, \$400.00. Motor #T3576954. Serial #30B04-4953.

Paid 12/11/33. Standard Chevrolet Co. By L. H.

Subscribed and sworn to before me this 3rd day of December 1936.

M. MULCONNERY.

My Commission expires March 28, 1934.

150-B

Exhibit No. 2

STATE OF MISSOURI

OFFICE OF SECRETARY OF STATE—MOTOR VEHICLE DEPARTMENT

Certificate of Title of a Motor Vehicle

I, the undersigned, Commissioner of Motor Vehicles of the State of Missouri, Do Hereby Certify, pursuant to the provisions of Section 18, Page 88, of the Acts of the General Assembly of Missouri, passed at the Extra Session of 1921, that an application has been made to me by said Act prescribed, for a certificate of title of a motor vehicle as follows:

Make, Freuhalf trailer, 2-wheel. Year 1932. Engine No. Ser. C24444. H. P. 5-Ton.

N. E. ROSENBLUM,

5852 Maffitt Ave., St. Louis, Mo.

Date 2/20/35.

And that the applicant has stated that said motor vehicle is subject to the following liens: \$322.25 International Harvester Co. St. Louis 4/5/34

I Do Further Certify that I have used reasonable diligence in ascertaining whether or not the facts stated in said application for a certificate of title are true, and that I am satisfied that the applicant is the lawful owner of the above-described motor vehicle, or is otherwise entitled to have the same registered in his name;

Wherefore, I do hereby certify that the above-named applicant has been duly registered in my office as the lawful owner of the above-described motor vehicle, or is otherwise entitled to have the same registered in his name, and that it appears upon the official records of my office that at the date of the issuance of this certificate, said motor vehicle is subject to the liens hereinbefore enumerated, if any, and none other.

As Witness, my hand and the seal of my office the day and year set opposite the name of the applicant in the foregoing certificate.

By authority.

DWIGHT H. BROWN,

Secretary of State.

V. H. STEWARD,

Commissioner of Motor Vehicles.

180-C

Exhibit No. 3

SCHNURE CHEVROLET COMPANY

3949 LINDELL BOULEVARD, ST. LOUIS, MO.

Franklin 2311.

Bill of Sale

Sold to: N. E. Rosenblum, 5852 Maffitt, St. Louis, Mo.

Salesman: H. L. Schnure.

One new Chevrolet Truck:

Serial #3PB10-10652.

Motor #T4662243.

Key #1g 4042

Color: Arcadia Green.

131" Dual Ch. & Cab

32x6-10 ply 6 wheels

\$658.75

85.30

Total: 744.05

Cr. Memo for Merchandise 150.00

Cash 410.05

Trade in: #820 1930 Chev 184.00

Total: 744.05

This will certify that this is a correct and true copy.

SCHNURE CHEVROLET CO.

H. L. SCHNURE, JR.

H. L. Schnure, Jr. V-Pres.

My commission expires 6/20/40

H. S. SCHNURE,

Notary Public.

"An Acre of Friendly Service."

Exhibit No. 4

180-D

Title Number 4260045

STATE OF MISSOURI

OFFICE OF SECRETARY OF STATE, MOTOR VEHICLE DEPARTMENT

Certificate of Title of a Motor Vehicle

I, the undersigned, Commissioner of Motor Vehicles of the State of Missouri, Do Hereby Certify, pursuant to the provisions

of Section 18, Page 88, of the Acts of the General Assembly of Missouri, passed at the Extra Session of 1924, that an application has been made to me as by said Act prescribed, for a certificate of title of a motor vehicle as follows:

Make, Baker Trailer. Year, 1934. Engine No., Ser. =5679.
H. P., 5 Ton.

N. E. Rosenblum, 5852 Maffitt Ave., St. Louis, Mo.

Date, 2-20-35.

And that the applicant has stated that said motor vehicle is subject to the following liens:

I Do Further Certify that I have used reasonable diligence in ascertaining whether or not the facts stated in said application for a certificate of title are true, and that I am satisfied that the applicant is the lawful owner of the above-described motor vehicle, or is otherwise entitled to have the same registered in his name:

Wherefore, I do hereby certify that the above-named applicant has been duly registered in my office as the lawful owner of the above-described motor vehicle, or is otherwise entitled to have the same registered in his name, and that it appears upon the official records of my office that at the date of the issuance of this certificate, said motor vehicle is subject to the liens hereinbefore enumerated, if any, and none other.

As Witness, my hand and the seal of my office the day and year set opposite the name of the applicant in the foregoing certificate.

By Authority

DWIGHT H. BROWN,

Secretary of State.

V. H. STEWARD,

Commissioner of Motor Vehicles.

82 UNITED STATES VS. N. E. ROSENBLUM TRUCK LINES ET AL.

181 *Exhibit No. 5*

M. F.—I. C. C. No. 1

N. E. ROSENBLUM

DOING BUSINESS AS

N. E. ROSENBLUM TRUCK LINES
(Contract Carrier)*

SCHEDULE OF MINIMUM RATES ON COMMODITIES AS LISTED HEREIN
BETWEEN ALTON, ILLS., EAST ST. LOUIS, ILLS., (INTERSTATE
TRAFFIC ONLY) ST. LOUIS, MO. AND POINTS IN IOWA, ILLINOIS,
INDIANA, KENTUCKY, MISSOURI, OHIO, AND OKLAHOMA NAMED
HEREIN

Issued March 23, 1936. Effective April 1, 1936

Issued by N. E. Rosenblum, 1409 South 8th Street, St. Louis,
Mo.

Exhibit No. 6

Insured

Bonded

182 TRANSAMERICAN FREIGHT LINES, INC.

Overnight Service

3599 Gratiot Ave.

Plaza 7227

DETROIT, MICHIGAN, *February 22, 1935.*

N. E. ROSENBLUM, # 2.
c/o St. Louis Terminal.

Freight bills are due within 48 hours. Mail remittances to
Detroit Office.

Feb. 1-15

2 1—SL-4795 St. L.-Chic.....	\$32.50	
2/2—C-9782 Chic-St. L.....	32.50	
2/4—SL-4824 St. L.-Chic.....	32.50	
2/5—C-9827 Chic-St. L.....	32.50	
2/12—SL-4906 St. L.-Chic.....	32.50	
2/13—C-9902 Chic. St. L.....	32.50	
		\$195.00
P. D. & P. L. Ins.....	5.41	
Deposit	25.00	
		30.41
		164.59

Insured

Bonded

TRANSAMERICA FREIGHT LINES, INC.
Overnight Service

751 15th Street

Lafayette 3225

DETROIT, MICH., March 23, 1936.

N. E. ROSENBLUM,
c/o St. Louis Terminal.

Freight bills are due within 48 hours. Mail remittances to
Detroit Office.

3/8-I-416 Ind.-St. L.....	\$30.00	
3/12-C-19172 Chic.-St. L.....	35.00	
3/13-SL-5646 St. L.-Chic.....	30.00	
3/14-C-19213 Chic.-St. L.....	35.00	
		\$130.00
Less:		
PD & PL INS.....	2.78	
CARGO INS.....	6.00	
Advance, Chic.....	10.00	
		18.78
		111.22

Insured

Bonded

TRANSAMERICA FREIGHT LINES, INC.
Overnight Service

3599 Gratiot Ave.

Plaza 7227

DETROIT, MICHIGAN, May 7, 1935.

N. E. ROSENBLUM,
c/o St. Louis Term.

Freight bills are due within 48 hours. Mail remittances to
Detroit Office.

April 16-30

4/17-SL-5617 St. L.-Chic.....	\$32.50	
4/18-C-11476 Chic.-St. L.....	32.50	
4/19-SL-5655 St. L.-Chic.....	32.50	
4/20-C-11550 Chic.-St. L.....	32.50	
4/23-SL-5608 St. L.-Chic.....	32.50	
		\$162.50
Less:		
P. D. & P. L. Ins.....	4.52	
4/18-40 gal. Gas.....	5.60	
4/20-45 " ".....	6.30	
4/24-36 " ".....	5.04	
4/25-Claim E-588.....	1.04	
		22.50
		140.00

Insured

Bonded

TRANSAMERICA FREIGHT LINES, INC.
Overnight Service

3599 Gratiot Ave.

Plaza 7227

DETROIT, MICHIGAN, *June 22, 1935.*

N. E. ROSENBLUM,
c/o St. Louis Terminal.

Freight bills are due within 48 hours. Mail remittances to
Detroit Office.

June 1-15

6/10—SL-6241 Chic-St. L. Guaranteed round trip. Script		
SL-5856 5/7/35	-----	\$32.50
6/11—SL-6262 St. L-Chic	-----	35.00
		<hr/> \$67.50
Less:		
PD & PL Ins.	-----	1.88
23 gal. Gas	-----	3.22
		<hr/> 5.10
		<hr/> 62.40

183 Insured

Bonded

TRANSAMERICAN FREIGHT LINES, INC.

Overnight Service

3599 Gratiot Ave.

Plaza 7227

DETROIT, MICHIGAN, *July 8, 1935.*

N. E. ROSENBLUM,
% St. Louis Term.

Freight bills are due within 48 hours. Mail remittances to
Detroit Office.

June 16-30

6/18—SL-6339 St. L-Chic	-----	\$35.00
6/29—CI-2566 Cin.-St. L.	-----	37.50
		<hr/> 72.50
PD. & PL. Ins.	-----	2.01
		<hr/>

Insured

Bonded

TRANSAMERICAN FREIGHT LINES, INC.

Overnight Service

3599 Gratiot Ave.

Plaza 7227

DETROIT, MICHIGAN, Oct. 7, 1935

N. E. ROSENBLUM,

% St. Louis Terminal.

Freight bills are due within 48 hours. Mail remittances to
Detroit Office.

Sept. 16-30

9/17-SL-7500 St. L.-Chic-----	\$32.50
9/18-C-15097 Chic.-St. L-----	32.50
9/20-C-15138 Chic.-St. L-----	30.00
9/19-SL-7546 St. L.-K. C-----	50.00
9/24-SL-7612 St. L.-K. C. & Ret-----	50.00
9/25-SL-7628 St. L.-Ind-----	30.00
9/26-I-9143 Ind.-St. L-----	30.00
9/26-SL-7641 St. L.-KC. & Ret-----	50.00
9/27-SL-7670 St. L.-KC. & Ret-----	50.00
9/28-SL-7667 St. L.-Louis-----	35.00
9/28-L-1295 Lou.-Chic-----	35.00
9/30-SL-7714 St. L.-Chic-----	32.50
	<hr/>
	\$490.00
Less--	
PD. & PL. Ins-----	13.60
9/19-11 gal. Gas-----	1.54
Deposit-----	50.00
	<hr/>
	65.14
	<hr/>
	424.86

Insured

Bonded

TRANSAMERICAN FREIGHT LINES, INC.

Overnight Service

3599 Gratiot Ave.

Plaza 7227

DETROIT, MICHIGAN, Sept. 23, 1935

N. E. ROSENBLUM,

% St. Louis Terminal.

Freight bills are due within 48 hours. Mail remittances to
Detroit Office.

Sept. 1-15

9/9—I-8873 Ind.-St. L.	\$30.00
9/10—SL-7388 St. L.-Chic	35.00
9/11—C-14925 Chic.-St. L.	35.00
9/12—SL-7431 St. L.-Chic	35.00
9/13—C-19964 Chic.-St. L.	35.00
9/13—SL-7441 St. L.-Lou	35.00
9/14—L-1248 Lou.-St. L.	30.00

\$235.00

Less—PD. & PL. Ins. 6.52

228.48

Insured

Bonded

TRANSAMERICAN FREIGHT LINES, INC.

Overnight Service

3599 Gratiot Ave.

Plaza 7227

DETROIT, MICHIGAN, Oct. 22, 1935

N. E. ROSENBLUM.

% St. Louis Terminal.

Freight bills are due within 48 hours. Mail remittances to Detroit Office.

Oct. 1-15

10/2—C-15451 Chic.-St. L.	\$30.00
10/4—SL-7793 St. L.-K. C. & Ret.	50.00
10/10—SL-7878 St. L.-Chic	32.50
10/11—C-15685 Chic.-St. L.	35.00
10/10—SL-7879 St. L.-Chic	32.50
10/11—C-15682 Chic.-St. L.	35.00

\$215.00

PD. & PL. Ins. 5.97

209.03

183-A

INTERSTATE COMMERCE COMMISSION

No. MC-13853 (A)

N. E. ROSENBLUM, CONTRACT CARRIER APPLICATION

Report and order recommended by F. W. McM. Woodrow, Examiner.

Served Aug. 9, 1937.

Notice to the parties

Exceptions, if any, must be filed with the Secretary, Interstate Commerce Commission, Washington, D. C., and served on all

other parties in interest within 20 days from date of service shown above. Otherwise at the expiration of said 20-day period the attached order will become the order of the Commission and will become effective unless exceptions have been seasonably filed by other parties, or the order has been stayed or postponed by the Commission.

183-B

INTERSTATE COMMERCE COMMISSION

No. MC-13853

N. E. ROSENBLUM, CONTRACT CARRIER APPLICATION

Submitted ———. Decided ———

Applicant found entitled to continue operations as a contract carrier by motor vehicle of commodities generally between St. Louis, Mo., on the one hand, and Chicago and Waukegan, Ill., and intermediate points on the other hand, over regular routes by reason of having been engaged in such operation on July 1, 1935, and continuously since that date. Permit granted. Application in all other respects denied.

Meyer E. Aronoff, C. E. Connor, and Joseph C. Hopewell for applicant.

M. G. Roberts, William W. Dalton, J. H. Miller, R. J. Williams, George W. Holmes, W. B. La Tourette, Kenneth Tensdale, A. F. Versen, E. G. Minor, David Archrod, and J. H. Wright for protestants.

Report and order recommended by F. W. McM. Woodrow, examiner

By application¹ filed February 11, 1936, N. E. Rosenblum, of St. Louis, Mo., doing business as N. E. Rosenblum Truck Lines, seeks a permit authorizing operation as a contract carrier by motor vehicle of commodities generally in interstate or foreign commerce in the States of Illinois, Indiana, Iowa, Kansas, Kentucky, and Missouri, over regular routes.

In accordance with the provisions of the Motor Carrier Act, 1935, the application was referred to the examiner for hearing and the recommendation of an appropriate order thereon. Hearing has been held. Various carriers by railroad and by motor vehicle oppose the granting of the application. The Board of Railroad Commissioners of the State of Iowa filed a protest, but was not represented at the hearing.

183-C Applicant presented no evidence with respect to his operations in Indiana, Iowa, Kansas, and Kentucky.

¹Under the "grandfather" clause of the Motor Carrier Act, 1935.

The application with respect to such operations will be denied. There remains for determination only the question whether applicant should be granted a permit to operate between St. Louis, Mo., and points in Illinois over the regular routes set forth in Appendix A.

As of the date of hearing, applicant owned two complete units of equipment and leased a third. He had operated the first unit since April 1934, the second since October 1934, and the leased unit since June 1935. From April 1934, to date of hearing, he had a desk and telephone in an office at 1125 South Broadway, St. Louis. He had no terminal facilities other than that office until some time in 1936, when he, Truman E. Baulos and William Shandalov shared the expense of a terminal operated by the latter in the name of Overnite Freight Service, at 1409 South 8th St., St. Louis.

Prior to February 1936 applicant hauled freight only for "reputable truckers." Subsequent thereto he hauled for individual shippers. He made verbal contracts with the respective truckers to transport between St. Louis and points in Illinois, over the routes set forth in Appendix A, shipments which the truckers had obligated themselves to handle for shippers. The freight hauled for shippers subsequent to February 1936, was also handled under contracts. Applicant stated that, as of the date of hearing, he accepted shipments only from the 10 to 13 concerns with whom he had contracts.

Applicant testified that prior to February 1936 he operated over each of the respective routes set forth in Appendix A. He referred to each by number; routes 1 and 2 were used 183—D "practically every day"; routes 3, 4, 5, and 12 "about twice a week"; routes 6, 7, 10, and 15 "about once a week"; routes 8, 9, 11, and 13 "about twice a month"; and route 15 "every 10 days". During this period, the truckers, with the exception of the Transamerican Freight Lines, Inc., paid applicant in cash for the delivery of each shipment and therefore he had no documentary evidence to substantiate his assertions. The Transamerican reimbursed him semi-monthly. The record contains photostatic copies of 8 settlement statements submitted to him by that company during the period February, 1935, to March, 1936, both inclusive. These set forth the date of shipment, the point of origin, point of destination, and the amount due applicant for the service rendered. The statements do not show the routes used, or that intermediate points were served. They show that shipments moved throughout this period between Chicago and St. Louis. In each instance the Transamerican deducted from the total,

obtained by adding the freight charges, amounts to provide for cargo, property damage, and public liability insurance the result being that applicant in fact paid for this insurance. In addition he carried collision, fire, theft, and turn-over insurance. He testified that he was in control of his equipment at all times, and that his verbal contracts with the respective trucking companies provided that he should haul shipments from designated points to designated destinations and receive therefor an agreed compensation.

Applicant stated that subsequent to February, 1936, he operated over the 15 routes shown in Appendix A more often than prior thereto. He explained that he was able to do this because he discontinued operations over certain other routes.

183-E As of the date of hearing, applicant had not obtained from the Missouri Public Service Commission authority to operate in interstate commerce within Missouri. He stated that in his opinion, he was not required to secure this authority, and testified that he had registered with the Code Authority in 1934. His counsel requested and obtained permission to file subsequently a certified copy of the certificate of registration. This has not been received by the Commission, and on brief counsel states that applicant was unable to furnish it.

Protestants maintain that applicant, having had no contact with the shipping public prior to February 1936, and having handled shipments only for "common carrier" by motor vehicle, has no motor carrier rights under the "grandfather" clause. They argue that the shippers employed the respective truckers as common carriers, and that under the law the truckers were liable for the prompt and safe delivery of each shipment. In their opinion, the applicant cannot bear the relation of a contract carrier and the trucker who engaged his services the relation of a common carrier with respect to the same shipment. They assert that the transportation was performed either by a contract carrier or by a common carrier, but not by both and that if the applicant has "grandfather" rights as a contract carrier then the truckers, as common carriers, have no "grandfather" rights with respect to the shipments transported by him. They contend that the truckers, who engaged applicant, acquired the "grandfather" rights and that the truckers have the relation to applicant of master and servant. But they say, even if the status is

183-F that of principal and agent, that applicant has no standing under the act because a certificate and a permit cannot be issued for the same service. They also contend that, since the practice of common carriers in using transportation service such as that furnished by applicant has been engaged in more or less generally, it is the same view that Congress did not

intend that every truck owner offering and performing such service should acquire "grandfather" rights.

In defining a common carrier by motor vehicle, the act states in part "any person who or which undertakes, whether directly or by lease or any other arrangement, to transport * * *." In the instant case, the truckers did not undertake to transport "directly" or "by lease." Did they undertake to transport by "any other arrangement"? According to the record, applicant had complete control of his equipment, paid for his insurance, operated under the trade name of N. E. Rosenblum Truck Lines, paid his own expenses, and agreed to transport in interstate commerce commodities generally for the truckers for a lump sum per load. He was responsible for the freight while it was in his custody. Many of the truckers for whom applicant hauled were represented at the hearing, and are protestants herein. They presented no evidence tending to show that the contracts had with applicant were other than stated by applicant. Surely, the term "any other arrangement" means something more formal and binding on the truckers than the agreements had with applicant; something somewhat akin to a lease.

The line-haul service having been performed by applicant, it would appear that with respect to the shipments hauled by applicant, the responsibility of the trucker was similar to that assumed by a broker or forwarder. Applicant's responsibility was the same as that of a motor carrier, whether he be a common carrier or contract carrier.

183-G The act protects the small operator. In the proceedings leading up to its adoption by the Congress, care was taken to consider and safeguard his rights. It was specifically provided therein that motor carriers not only could continue the motor carrier service being conducted on June 1 and July 1, 1935, but could add to their equipment and facilities as the development of the business and the demands of the public may require. A permit or certificate granted to the small operator over any given route confers the same privileges as if granted to a large operator, and the rights of the small operator are as important as those of the large operator. The Commission, in its administration of the act, must protect the rights of each.

While it might be easier to administer the act if owner operators, other than those who had entered into a lease or other arrangement with motor carriers, who perform line-hauls for large truckers, are found to be employees of the truckers and are denied "grandfather" rights, the act does not permit this. When the act was adopted, the Congress was aware that it was customary for truckers and forwarding companies to have independent operators perform under contract the line-haul service.

If Congress had intended that these operators, when performing line-hauls for other motor carriers, should acquire no rights under the "grandfather" clause, surely it would have provided that in clear and unmistakable terms. This it did not do. The independent operator, having refrained from leasing his equipment to the motor carrier, or from entering into "any other arrangement" of a formal character with respect to the control of his services by the motor carrier, cannot be divested of his rights under the "grandfather" clause. Applicant has transported commodities generally under contract for others continuously 183-H since prior to July 1, 1935. From a transportation standpoint, the truckers for whom he hauled bear the relationship to him of shippers. The transportation services were identical with those that he would have rendered if in fact the truckers had been shippers. The conclusion is inescapable that applicant is a motor carrier in his own right, and thus subject to the provisions of the act.

The examiner finds that applicant was, on July 1, 1935, and continuously since that date, has been in bona fide operation as a contract carrier by motor vehicle of commodities generally between St. Louis and Chicago and Waukegan, over the routes set out in Appendix A, and serving all intermediate points thereon, and that therefore, he is entitled to a permit authorizing the continuance of such operations, and that the application in all other respects should be denied.

It is recommended that the appended order be entered.

F. W. McM. WOODROW,

(Signature.)

183-I

APPENDIX A

Route No. 1—Between St. Louis, Mo., and Chicago, Ill., over U. S. Highway 66.

Route No. 2—Between St. Louis, Mo., and Chicago, Ill., via Decatur, Ill., over U. S. Highway 66, and Illinois Highway 48, thence via Bloomington, Ill., over U. S. Highway 51, thence to Chicago over U. S. Highway 66.

Route No. 3—Between St. Louis, Mo., and Chicago, Ill., via Vandalia, Ill., over U. S. Highway 40, thence via Bloomington, Ill., over U. S. Highway 51, thence to Chicago over U. S. Highway 66.

Route No. 4—Between St. Louis, Mo., and Chicago, Ill., via Effingham, Ill., over U. S. Highway 40, thence to Chicago over U. S. Highway 45.

Route No. 5—Between St. Louis, Mo., and Chicago, Ill., via Marshall, Ill., over U. S. Highway 40, thence to Chicago, over Illinois Highway 1.

Route No. 6—Between St. Louis, Mo., and Chicago, Ill., via Vandalia, Ill., over U. S. Highway 40, thence via La Salle, Ill., over U. S. Highway 51, thence to Chicago over U. S. Highway 6.

Route No. 7—Between St. Louis, Mo., and Chicago, Ill., via Jacksonville, Ill., over U. S. Highway 67, thence via Springfield, Ill., over U. S. Highway 36, thence to Chicago over U. S. Highway 66.

Route No. 8—Between St. Louis, Mo., and Chicago, Ill., via Springfield, Ill., over Illinois Highway 4, thence via Peoria, Ill., over Illinois Highway 24, thence via Depue, Ill., over Illinois Highway 29, thence to Chicago over U. S. Highway 6.

Route No. 9—Between St. Louis, Mo., and Chicago, Ill., via Joliet, Ill., over U. S. Highway 66, thence via Aurora, Ill., over U. S. Highway 30, thence to Chicago over U. S. Highway 34.

Route No. 10—Between St. Louis, Mo., and Chicago, Ill., via Lincoln, Ill., over U. S. Highway 66, thence via Morton, Ill., over Illinois Highway 121, thence via Peoria, Ill., over U. S. Highway 150, thence via Chenoa, Ill., over U. S. Highway 24, thence to Chicago over U. S. Highway 66.

Route No. 11—Between St. Louis, Mo., and Chicago, Ill., via Bloomington, Ill., over U. S. Highway 66, thence via Morton, Ill., over Illinois Highways 9 and 121, thence via Peoria, Ill., over U. S. Highway 150, thence via Chenoa, Ill., over U. S. Highway 24, thence to Chicago over U. S. Highway 66.

183-J Route No. 12—Between St. Louis, Mo., and Chicago, Ill., via Vandalia, Ill., over U. S. Highway 40, thence via Decatur, Ill., over U. S. Highway 51, thence via Morton, Ill., over Illinois Highway 121, thence via Peoria, Ill., over U. S. Highway 150, thence via Chenoa, Ill., over U. S. Highway 24, thence to Chicago over U. S. Highway 66.

Route No. 13—Between St. Louis, Mo., and Chicago, Ill., via Joliet, Ill., over U. S. Highway 66, thence via Aurora, Ill., over U. S. Highway 30, thence via Elgin, Ill., over Illinois Highway 31, thence to Chicago over U. S. Highway 20.

Route No. 14—Between St. Louis, Mo., and Waukegan, Ill., via Effingham, Ill., over U. S. Highway 40, thence to Waukegan over U. S. Highway 45, and Illinois Highways 172 and 20.

Route No. 15—Between St. Louis, Mo., and Chicago, Ill., via Onarga, Ill., over U. S. Highway 66, and Illinois Highway 48, thence via Kankakee, Ill., over U. S. Highway 45, thence to Chicago over Illinois Highway 49.

183-K Recommended by F. W. McM. Woodrow, Examiner.

F. W. McM. WOODROW,
(Signature.)

ORDER

Of the Interstate Commerce Commission, Division 5, effective on
the day of A. D. 1937.

No. MC-13853

N. E. ROSENBLUM, CONTRACT CARRIER APPLICATION

Investigation of the matters and things involved in this proceeding having been made, said application upon due notice having been heard by Examiner F. W. McM. Woodrow, who has made and filed a report herein containing his findings of fact and conclusions thereon, which report is hereby made a part hereof, and said proceeding having been duly submitted:

It is ordered, That upon full compliance with all requirements of Sections 215 and 218 of the Motor Carrier Act, 1935, with the rules and regulations promulgated by the Commission thereunder, and with the requirements established generally and discussed at some length in Contracts of Contract Carriers, 1 MCC 628, a permit be issued to N. E. Rosenblum, of St. Louis, Mo., doing business as N. E. Rosenblum Truck Lines, authorizing him to operate as a contract carrier by motor vehicle of commodities generally, between St. Louis, Mo., and Chicago and Waukegan, Ill., over the regular routes set forth in Appendix A, hereby made a part hereof, and serving all intermediate points thereon.

It is further ordered, That the above-described permit be issued upon the condition that the operations authorized thereunder shall be conducted in accordance with all rules, regulations, and requirements relating thereto issued by the Commission under the Motor Carrier Act.

And it is further ordered, That the application in all other respects be, and it is hereby, denied.

By the Commission, division 5.

[SEAL.]

W. P. BARTEL, *Secretary*.

(Admitted in evidence by the District Court over the objection of defendants' counsel that said recommended report and order are irrelevant and immaterial to the issues in the case.)

Docket MC 13853 (Form B. M. C.—A)

In the Matter of the APPLICATION OF N. E. ROSENBLUM, INDIVIDUAL, DOING BUSINESS AS N. E. ROSENBLUM TRUCK LINES, OF 1125 SOUTH BROADWAY, ST. LOUIS, MISSOURI, FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR PERMIT (FORM B. M. C.—A) AUTHORIZING OPERATION AS A COMMON OR CONTRACT CARRIER BY MOTOR VEHICLE IN THE TRANSPORTATION OF COMMODITIES GENERALLY IN INTERSTATE COMMERCE, IN THE STATES OF ILLINOIS, MISSOURI, INDIANA, KENTUCKY, IOWA, AND KANSAS, OVER THE ROUTES AND BETWEEN THE POINTS PARTICULARLY DESCRIBED IN THE APPLICATION.

ST. LOUIS, MISSOURI.

November 28, 1938, 10:00 a. m.

Before H. W. ANGLE, Examiner.

Met pursuant to Notice.

Appearances

Meyer E. Aronoff, 369 Paul Brown Building, St. Louis, Missouri, appearing for applicant.

Joseph C. Hopewell, 706 Chestnut Street, St. Louis, Missouri, appearing generally.

B. W. LaTourette, 314 North Broadway, St. Louis, Missouri, appearing for Be-Mac Transport Company, Inc., et al.

J. H. Miller, 1667 Railway Exchange Building, St. Louis, Missouri, appearing for Western Trunk Line Committee of Rail Lines.

Proceedings

Exam. ANGLE. The Interstate Commerce Commission has set for further hearing at this time and place Docket Number MC-13853, N. E. Rosenblum, contract carrier application. By application filed February 11th, 1936, N. E. Rosenblum, St. Louis, Missouri, seeks a permit authorizing operation in interstate or foreign commerce as a contract carrier by motor vehicle of general commodities between points in Illinois, Indiana, Iowa, Kansas, Kentucky, and Missouri over specified routes. Hearing was held on December 4th, 1936, before F. W. McM. Woodrow and a report and order recommending the granting of the application as stated in the report and order was served August 9th, 1937. Exceptions dated August 27th, 1937, and September 23, 1937, were filed by

certain of the protestants herein to the report and order recommended by the Examiner; and certain of the protestants were heard in oral argument November 23, 1937.

Upon petition of the protestants a further hearing in the premises was urged April 19, 1938. By its order dated May 21, 1938, the Commission reopened the matter for further hearing. Does that correctly state the issues, gentlemen?

Mr. ARONOFF. I believe so.

Mr. LATOURETTE. I think so.

Exam. ANGLE. Is the applicant present?

Mr. ARONOFF. Yes. The applicant is present.

Exam. ANGLE. Who appears for the applicant?

186 Mr. ARONOFF. M. E. Aronoff, attorney and registered practitioner, 369 Paul Brown Building, St. Louis, Missouri, appearing for applicant.

Mr. HOPWELL. Joseph C. Hopwell, attorney at law, 706 Chestnut Street, St. Louis, Missouri, licensed practitioner before this Board. I would like to have my name entered as appearing generally.

Exam. ANGLE. You gentlemen are appearing solely in a representative capacity; are there any other appearances for the applicant? (No response.)

Exam. ANGLE. Are there any appearances for protestants?

Mr. LATOURETTE. B. W. La Tourette, 314 North Broadway, St. Louis, Missouri, appearing for the same parties as noted in the original hearing; namely, Anderson Motor Service Company; BeMac Transport Company, Inc.; Brashear Freight Lines, Chicago; St. Louis Transfer Company; Consolidated Forwarding Company, Inc.; Decatur Cartage Company; Highway Merchandise Carriers, Inc.; Mound City Forwarding Company; Night Hawk Freight Service; Peoria Cartage Company; Plaza Express Company; St. Louis Forwarding Company; and Viking Freight Company, Inc.

Mr. MILLER. J. H. Miller, 1667 Railway Exchange Building, St. Louis, Missouri, appearing for Western Trunk Lines Committee of Rail Lines.

Exam. ANGLE. Are there any other appearances? (No response.)

187 Mr. ARONOFF. In this Rosenblum case, as mentioned at the previous hearing, there was an abandonment to any claims of routes, to rights on any routes other than those routes designated between St. Louis and Chicago; and under those conditions the applicant is willing that the testimony in the Baulos case on this hearing and the testimony in the Rosenblum case be incorporated in the one record, and to be heard by this Board.

Exam. ANGLE. As I understand it you want one report covering both applications—or do you want separate reports?

Mr. ARONOFF. Separate reports.

Exam. ANGLE. Just by reference?

Mr. ARONOFF. Just by reference, so that the one hearing will suffice for the two reports.

Mr. LATOURETTE. Well, now, of course that may be possible as to certain of the testimony and not possible as to other parts of it. If it can be conveniently segregated I have no objection to it. But there will be, for example, on the part of protestants here today, certain testimony affecting particularly the Rosenblum case which may not affect the Baulos case; and there may be certain testimony in the Baulos case that may not affect the Rosenblum case.

Exam. ANGLE. Since we have got separate reports, I think if it isn't the same it might be well to repeat it, so that it will be separate and distinct.

Mr. ARONOFF. Here is our position in the matter:
188 There was a petition filed in the matter for reopening to take further nearly discovered evidence in the two matters. Under the rule 15-B of the Rules of Practice of the Interstate Commerce Commission, if the application be for a further hearing before final submission or for reopening a proceeding to take further evidence, the nature and purpose of the evidence to be adduced must be stated and must appear not to be merely cumulative. Now, in accordance with that rule, the attorney for the protestant has filed the petition and has adduced briefly the evidence to be submitted. We take the position that we are here for the purpose of trying the issues brought up by that application and no other matter. And if that be the ruling I think this hearing can be used in both applications. If the Board rules that this hearing be confined for the purposes for which this hearing was opened, I believe in accordance with that rule it should be.

Mr. LATOURETTE. Relative to counsel's statement, of course, we are governed by the order of the Commission reopening this case; and that order was entered May 21, 1938, and is not restrictive in any manner as to the testimony that may be heard by the Joint Board or the Examiner in either one or all of these three cases.

Mr. ARONOFF. It does say "further hearing"; it does not say "rehearing." It says "further hearing," and if you connect
189 that up with the rules, I think it should be restricted to the evidence adduced.

Exam. ANGLE. One of these cases is a Joint Board case and the other is an Examiner case; and what the Examiner might want to

recommend might be different from what the Joint Board might recommend.

Mr. ARONOFF. It is just a matter of using the record one to the Examiner and one to the Joint Board, and let them make their own conclusions.

(Here followed discussion outside of the record.)

Exam. ANGLE. Gentlemen, there will be no free copies of the proof. If you want a transcript, make your arrangements with the official reporter. And further, there will be no smoking during the hearing, nor during the recess thereof in the hearing room. Are you ready to proceed, Mr. LaTourette?

Mr. LATOURETTE. Does the applicant have any direct testimony?

Mr. ARONOFF. Yes, Mr. Commissioner; I wish to state that we will adopt the record previously made in this case, and will submit it at this time, subject to any rebuttal.

Exam. ANGLE. Subject to any additional evidence on rebuttal, you mean?

Mr. ARONOFF. That's right.

Mr. LATOURETTE. I will call Mr. Harty.

190 J. M. HARTY was sworn and testified as follows:

Direct examination by Mr. LATOURETTE:

Q. Will you give the reporter your name, your occupation, and headquarters?

A. J. M. Harty, Local Manager Trans-American Freight Lines, Inc., 2306 North Broadway, St. Louis, Missouri.

Q. How long have you been connected with the Trans-American Company, Mr. Harty?

A. Since 1931.

Q. As Local Manager, I assume that you are in charge of all the St. Louis operations of your company?

A. That is true.

Q. And all those having to do with the operation are under your direct control?

A. Correct.

Q. How many units of equipment does the Trans-American Company operate on its system?

A. At this time?

Q. Yes.

A. Close to 600.

Q. And during the period of June 1, 1935, and July 1, 1935, up until 1936, would you say there was any great difference in that number of units operated?

A. Yes, there is some difference. I would say at least
191 200 difference.

Q. Would you say, then, that during the period July 1, 1935, up until March 1936, you had about 400 units?

A. That is correct.

Q. Will you state for the record what the practice is in the business of a common carrier with the respect to the engaging of extra equipment to augment the regular equipment that might be available to handle traffic?

A. Well, it is primarily supply and demand, what you can hire someone for.

Q. Is it customary, and has it been customary for common carriers from time to time to augment their road unit supply by engaging extra trucks from time to time to handle overflow cargo?

A. That is correct.

Q. In your business, did you do that on occasions?

A. Yes, we have.

Q. Did you do it in the period from July 1, 1935, up until around March 1936?

A. We have done it constantly, off and on.

Q. Have you made a check of your records to determine whether or not at any time your company engaged trucks owned by one N. E. Rosenblum to handle overflow freight?

Mr. ARONOFF. Mr. Examiner, I wish to object to any testimony as to the hiring of equipment by the applicant
192 as a contract carrier, inasmuch as that question has been gone into at the original hearing; it is incorporated in the original matter. It is merely repetitious and accumulated, at this time, and has nothing to do with the evidence which the protestants claim to bring out in this petition for a rehearing, in this newly discovered evidence which they intend to bring out.

Exam. ANGLE. I think that the Commission would like to have presented to them the question of contract carrier acting as contract carriers for common carriers; and for that reason I will have to overrule your objection.

Mr. ARONOFF. Yes; except to note that that question has been argued before the division.

Exam. ANGLE. Has a decision been made on that?

Mr. ARONOFF. No; it is pending on this hearing.

Mr. LATOURETTE. Read the question.

(Question read by the reporter.)

The WITNESS. Yes; I went back through our records, and have a statement here of some in- and out-bound loads from June 1, 1935, to March 1936, which I will be glad to submit.

By Mr. LATOURETTE:

Q. You have those developed from your records, that during the period from June 1, 1935, until March 1936, you did use the

equipment of Mr. Rosenblum to augment your own equipment?

A. That is correct.

193 Q. Will you state for the record what the practice is with respect to the billing of that freight, how it is handled over the dock; that is, with respect to whose employees handle it, how it is delivered at destination with respect to the delivery receipt on which it is delivered, and all matters connected with it generally?

Mr. ARONOFF. So as not to cause too many interruptions, may it be understood that the applicants object to this entire line of questioning, so that I won't have to object to each individual question regarding this evidence concerning the hauling of the applicant as a contract carrier?

Exam. ANGLE. Your objection will be shown on the record, Mr. Aronoff:

Mr. ARONOFF. I won't have to object as to each question?

Exam. ANGLE. Your objection to the whole evidence given by this witness.

Mr. ARONOFF. That is right, this line of questioning.

Exam. ANGLE. Your objection will be shown on the record.

The WITNESS. A. First of all, it is through our solicitation that the business is obtained; and in practically every instance our own trucks accumulate this freight, except possibly on straight load lots where we may hire a hired truck and they pick up this load at our direction. The bulk of the freight, however, is accumulated on our docks.

194 By Mr. LATOURETTE:

Q. In other words, you mean, then, that you pick it up with your own pickup and delivery trucks?

A. That is correct.

Q. And bring it to your dock?

A. To our dock; and supplement our own equipment at times when we do not have enough equipment available. We get on the telephone and call up certain people that we know have extra equipment and the price is generally supply and demand. One man will have one price and another man will have another price. We agree on a price for a load from our dock to our dock at our other terminals, and in some instances, on straight load lots, it is one pickup and one delivery. The price is all based on the type of a load you have at that particular time.

Q. With reference to the billing of that freight, state whether or not it is billed on the waybills of the Trans-American Freight Lines?

A. In every instance.

Q. State whether or not at destination it is delivered on delivery receipts of the Trans-American Freight Lines?

A. It is.

Q. Is it also true that with the exception of cases as you mentioned in the event you have a straight load, do you in all other cases deliver the freight at destination in the pickup and delivery trucks of Trans-American?

A. In most instances we have hired—on the LTL loads,
195 that is, loading from our dock, that we will hire a man from dock to dock.

Q. You mean on the pickup?

A. No; I mean on our accumulation of LTL freight on our dock; if we cannot load on our own trucks we hire a man from our dock to our dock.

Q. So that the pickup and delivery would be handled by Trans-American at both ends?

A. That's right. Further on that, in most instances, too, in making pickups and delivery with hired equipment, we have been unionized for some years; and in making even straight pickups and the deliveries it is necessary for us to put our own union men on those trucks to make those pickups and those deliveries.

Q. Has the Trans-American Freight Lines filed an application with the Interstate Commerce Commission under the grandfather clause of the Motor Carrier Act?

A. That is true.

Q. And in that application has it applied for rights between St. Louis and Chicago?

A. Correct.

Q. Does that application set forth specific routes over which they are seeking authority to operate?

A. That is correct.

Q. In the event that this extra equipment is used and engaged, state what the fact is with respect to the route that
196 that truck shall take?

A. Well, between here and Chicago prior to regulations the State of Illinois had no regulation as to routes.

Q. Yes.

A. Our general route was 66.

Q. Now, state whether or not in the case of these rented or hired trucks your company designated the specific route over which the truck should go?

A. Not generally, for the reason there was no permit required in Illinois as to specific routes. We did designate them generally, because we had registration stations along the route where we asked most of these trucks to register.

Q. Then is it true that you did designate the route that should be taken, by requiring these trucks to register at registration stations of Trans-American Freight Lines?

A. That is correct.

Q. Then, following the filing of your application with the Interstate Commerce Commission, state what the fact is with respect to whether the trucks were required to follow the designated routes set forth in your application?

A. In every instance now, since regulations.

Q. And since the filing of your application with the Interstate Commerce Commission, is that true?

A. That is correct.

Q. Now, were there or were there not different kinds of
197 arrangements that prevailed with the owners of this extra equipment, with respect to whether insurance was or was not deducted in making settlements of the charges that you paid for the use of the truck?

A. Well, in every instance it was a gross amount that was settled; that he was to earn so much for that trip.

Q. Yes.

A. In our accounting procedure we naturally would show on our records so much for insurance out of that gross amount; so much accruing for the hiring of the equipment. But, in every instance, you had the gross amount settled with the man for the pulling of the load.

Q. Well, do I understand from that that you arrived at a figure that this owner of the truck would have for his actual transportation costs?

A. That is correct; and then our report and our records would merely indicate that so much of that money was for insurance.

Q. Did you have, then, a figure which included the furnishing of insurance by the Trans-American Freight Lines?

A. In some instances—yes, we had the figure on each load; what the insurance amounted to.

Q. Yes.

A. In some instances the owner, operator, or hired truck would pay for the insurance and we would charge him for it. Some
198 of them would absorb the insurance themselves. But, in our accounting setup we indicate the amount of insurance out of each load.

Q. Did the Trans-American Company carry cargo and other forms of insurance on this particular freight that is hauled on these owner-operator trucks?

A. In every instance. We will not accept anybody else's insurance.

Q. And did the coverage of that policy extend to all trucks that you rented and used in the carrying of this freight?

A. That is correct; and that is the reason why we have on our accounting reports on each load; we have to set up so much for insurance, for figuring the amount of compensation due the insurance company.

Q. Do I understand from that, then, that you could in certain instances agree on a lesser amount that was paid to the owner-operator and no insurance appear on the statement of accounting to the owner-operator, or you could agree on a greater amount and deduct the insurance and show the net amount to the owner-operator?

A. Well, in every instance our company has always insisted on our insurance applying to the load. In other words, that we carry the insurance. That has been a pure matter of bartering; whether we can collect the insurance from the hired operator along out of the amount due him.

Q. Now, as to these rented trucks, did the owner furnish
199 the driver in all instances?

A. Yes.

Q. The owner of the truck—state whether or not your company exercised control over the driver to the extent that you would order him to go over certain routes?

Mr. HOPEWELL. It looks to me like Mr. LaTourette is going away beyond any issues germane to this hearing. To begin with, that type of question calls for a conclusion on the part of the witness.

Exam. ENGLE. If he knows, I see no reason why he should not answer. If he does not know, of course, that will so show, too.

By Mr. LATOURETTE:

Q. Do you remember the question?

The WITNESS. Between here and Chicago I would say that we did have jurisdiction over the driver, to the extent of telling him where he was to go and what time he was supposed to reach destination. But, as stated previously, with no regulatory routes required in Illinois prior to the I. C. C. Motor Carrier Act, we did not in all instances designate a specific route over which that man should travel. In fact, our own trucks would sometimes vary in their own routes in Illinois.

Q. But you did have these registration stations which you referred to?

A. Yes.

Q. Now, in case the driver of a particular truck was not
200 acceptable to your company, did you have the right to substitute another driver, or order another driver to be put on the truck?

Mr. ARONOFF. Is this the general practice or are you referring to—

Mr. LATOURETTE. We are asking about Trans-American's relations with Rosenblum.

Mr. ARONOFF. I think we ought to have specific instances of when these transactions took place.

Mr. LATOURETTE. The witness has testified that he checked his records from and to certain dates.

Exam. ENGLE. Your testimony relates to your relations with Rosenblum?

The WITNESS. That is correct.

By Mr. LATOURETTE:

Q. During this period we have designated, from 1935, around June and July, up until March of 1936?

The WITNESS. That is correct.

Mr. LATOURETTE. May we have the last question?

(Question read by the reporter.)

The WITNESS. Well, I can recall one specific instance where we did with Rosenblum. His driver showed up drunk, and we refused to let him go out on the truck. Rosenblum did supply another driver, however.

By Mr. LATOURETTE:

Q. In your grandfather application, are you claiming grandfather rights by reason of all of the freight transported
201 in the name of the Trans-American, both in your own equipment and in the equipment of these leased trucks?

A. That is correct.

Q. With reference to the bills of lading covering the shipments, will you state for the record whether or not they were issued in the name of Trans-American Freight Lines?

A. In every instance.

Q. You have testified now with respect to the nature of the relations between the Trans-American Company and Rosenblum; I will ask you whether you are generally familiar with the practice of common carriers in this area in the matter of augmenting their equipment?

A. Yes.

Q. Would you say that the relations as between your company and Rosenblum's were any different than the general practice of common carriers in this area?

A. No, it has been the general practice ever since I have been in the trucking business for you to hire extra equipment whenever you needed it.

Mr. LATOURETTE. You may cross-examine.

Mr. ARONOFF. Mr. Examiner, I wish to move that the entire testimony of James Harty be stricken from the record, as being merely repetitious of matters that have been gone into on the previous hearing. There have been exhibits of the Trans-American Freight Lines filed at the original hearing, examinations, and cross examinations, and arguments before
 202 the Division on the very questions now being brought out by the protestants; and this testimony is an absolute violation of the rules of practice of the Commission and more particularly Rule 15-B, as being merely cumulative; and for that reason I move that it be stricken from the record; and not relevant to the issue raised in his petition for reopening to take newly discovered evidence herein. He prays that the Commission reopen the within proceedings for the purpose of receiving further newly discovered evidence respecting the matters and things hereinabove set forth. He sets forth merely partnership and dual operations. I suggest that it is an undue burden on the applicants to introduce testimony concerning other operations when the matter has already been put before the board and no indication given to the applicant that they will be required to give it again.

Exam. ANGLE. Did the applicant satisfactorily rebut that testimony at the prior hearing?

Mr. ARONOFF. Certainly.

Exam. ANGLE. What difference does it make?

Mr. ARONOFF. The difference is that the protestants are trying to patch up an occasional hole here and there, because the original hearing was approved for the applicant to receive his permit. And this is now an attempt to further fortify his contentions.

We have no notice of that. We were just told this would
 203 be evidence for the purpose of bringing out certain things.

Mr. LATOURETTE. Who told you that? The order of the Commission did not.

Mr. ARONOFF. The petition for reopening did.

Mr. LATOURETTE. The order of the Commission did not.

Mr. ARONOFF. The order of the Commission said a further hearing.

Mr. LATOURETTE. Yes, further hearing. The order of the Commission prevails. I may have asked for ten different things and they may have limited it to one.

Exam. ANGLE. Mr. Counsel, this is a fact finding proceeding; and the Commission is interested in getting all the facts it can before it, in order to make a just and fair finding. I will have to overrule your motion to strike.

Mr. ARONOFF. Can we at this time move that the testimony other than that contained in this petition, be deferred until a later time, to give us an opportunity to assemble our evidence?

Exam. ANGLE. That is a matter for the Commission to decide. I do not have such authority, Mr. Counsel.

Mr. ARONOFF. Can't we at this time confine the hearing to that brought out in that petition, and go into the other matters later in the day? I think we should be given a right—we have been taken completely by surprise in this matter.

204 Mr. LATOURETTE. I submit, now, that there is no surprise whatever in this case, when the order of the Commission shows on its face that all of these cases are reopened for further hearing, with no limitation whatsoever on the order itself. And after all, that is what we are governed by in this hearing.

Mr. ARONOFF. There has been only one thing asked for in the further hearing.

Mr. LATOURETTE. That is true; but the Commission has seen fit to go further than that, and reopen it in its entirety, and so did by their order which is dated back in May 1938, about six months ago, and you had notice then that this was reopened for all purposes.

Exam. ANGLE. Off the record.

(Discussion outside of the record.)

Exam. ANGLE. I have overruled your motion.

Mr. ARONOFF. Note my exception. No cross-examination.

Exam. ANGLE. You are excused.

(Witness excused.)

Mr. LATOURETTE. Call Mr. Grant.

K. H. GRANT, was sworn, and testified as follows:

Direct examination by Mr. LATOURETTE:

Q. Give the reporter your name and address and occupation.

205 A. K. H. Grant; employed with Viking Freight Company, 614 South Sixth Street, St. Louis, Missouri.

Q. What is your occupation with the Viking Freight Company?

A. Chief Dispatcher.

Q. How long have you been so engaged?

A. So engaged in that capacity since May 11, 1936.

Q. Did you, at my request, check the records of the Viking Freight Company to determine if they had at any time during the period June 1, 1935, up until the spring of 1936 used a truck or trucks of N. E. Rosenblum, between St. Louis and Chicago, Illinois?

A. Yes, I did; sir.

Mr. ARONOFF. My objection is the same as —

Mr. LATOURETTE. Yes, we understand your objection runs to all this testimony.

Q. Will you state for the record what that investigation discloses?

The WITNESS. I checked our records with reference to the movement of trucks in the transportation of freight between St. Louis and Chicago for the period of June 1935 to March 1936; and nowhere in our records could I find evidence of the fact that a truck of Mr. Rosenblum's was used for that purpose to transport freight between St. Louis and Chicago.

Mr. LATOURETTE. That is all.

Mr. ARONOFF. No questions.

206 Exam. ANGLE. You are excused.

Mr. ARONOFF. Motion that that also be stricken.

Exam. ANGLE. I have to overrule your motion.

(Witness excused.)

JOSEPH PAZDERKA, Jr., was sworn, and testified as follows:

Direct examination by Mr. LATOURETTE:

Q. Give the reporter your name and address and occupation.

A. Joseph Pazderka, Jr.

Q. What is your occupation?

A. Assistant to the president.

Q. Of what company?

A. Mound City Forwarding Company, Inc.

Q. What is your address?

A. 2227 Carr Street, St. Louis, Missouri.

Q. Mr. Pazderka, did you, at my request check the records of the Mound City Forwarding Company for the period of June 1, 1935 up until approximately March 1936, to determine if you had at any time used a truck of N. E. Rosenblum under a rental or lease arrangement between St. Louis and Chicago, Illinois?

A. Yes, sir; we did.

Q. What does that check disclose?

A. Our records disclose that we never hired trucks owned by N. E. Rosenblum during that period.

207 Q. Did you find that you had rented a truck of William Shandalov during that period?

A. Yes, we did.

Mr. LATOURETTE. That is all.

Mr. ARONOFF. No questions. The same objection; the same motion?

Exam. ANGLE. The same ruling. You are excused.

(Witness excused.)

JOHN P. ANDERSON was sworn and testified as follows:

Direct examination by Mr. LATOURETTE:

Q. What is your name?

A. John P. Anderson.

Q. What is your occupation?

A. Secretary, Highway Merchandise Carriers, Inc.

Q. Where are your headquarters?

A. At 822 Fourth Street, St. Louis.

Q. How long have you been connected with the Highway Merchandise Carriers?

A. About April 1935.

Q. Did you at my request check the records of the Highway Merchandise Carriers, Inc., to determine if during the period of June 1, 1935, until April or March 1936 you rented or leased a truck of N. E. Rosenblum?

A. I checked the records and found no record of ever
208 leasing or hiring a truck from N. E. Rosenblum during that period.

Mr. LATOURETTE. You may cross-examine.

Mr. ARONOFF. The same motion.

Exam. ANGLE. The same ruling.

Mr. ARONOFF. No cross-examination.

Mr. HOPEWELL. No cross-examination.

Mr. ARONOFF. You are dismissed.

(Witness excused.)

GEORGE R. GOODE was sworn and testified as follows:

Direct examination by Mr. LATOURETTE:

Q. Give the reporter your name and address and occupation.

A. George R. Coode, President Be-Mac Transport Company, Inc., 1211 Hadley Street, St. Louis.

Q. How long has the Be-Mac Company been in operation, Mr. Goode?

A. Since 1931.

Q. Does it own its own equipment?

A. Yes, sir.

Q. Do you have an operation between St. Louis and Chicago?

A. Yes.

Q. Is that over fixed routes?

A. Yes.

Q. Have you checked the records of your company to determine that during the period of June 1, 1935, up until
209 March 1, 1936, you rented any trucks from N. E. Rosenblum?

A. Yes; I checked our records and found three occasions where we rented the trucks of N. E. Rosenblum.

Q. Do you have the dates fixed generally in your mind?

A. Twice in September and once in October 1935.

Q. With respect to that freight, will you tell the Commission whether or not it was moved on waybills of Be-Mac Transport?

A. Yes, sir.

Q. Was it delivered on delivery receipts of Be-Mac Transport?

A. Yes, it was.

Q. Was it handled over the docks of Be-Mac Transport, those at St. Louis and at Chicago?

A. Two occasions it was handled over our docks, and one occasion it was a straight load.

Q. Has the Be-Mac Transport filed a grandfather application with the Interstate Commerce Commission?

A. Yes, sir.

Q. And is it asking in that application for routes between St. Louis and Chicago.

A. Yes.

Q. Including the transportation of freight both in its own equipment and equipment such as it might obtain to augment its own supply?

A. Yes, sir.

Q. What are the facts with respect to whether or not on the freight carried on the Rosenblum trucks your company carries insurance on it?

A. Yes; we carry all of our own insurance.

Q. State whether or not that insurance was paid by the Be-Mac Transport?

A. Yes; we pay the insurance to our own insurance company, on a gross receipts basis which covers the amount of charges we collect for the transportation of our freight.

Q. And does the coverage in your policy extend to not only your own trucks, but such trucks as you should lease?

A. All trucks owned and operated by our company.

Q. Was the insurance charged in any way to Rosenblum?

A. Not at all; no.

Q. Now, state what the facts are with respect to whether you could or could not remove a particular driver on a Rosenblum truck, would he not be satisfactory to you?

A. Well, the drivers are under our direction. We direct them what to do; and if he won't do it, why, naturally we would take him off the truck.

Q. And would you direct him when to leave a particular point with his truck?

A. Yes; that is correct; and direct him where to go.

Q. With respect to this freight transported in a truck of Rosenblum, were the bills of lading issued in the name of Be-Mac Transport?

211 A. Yes, sir; our name on the bill of lading.

Q. Solicited by your solicitor?

A. That is correct.

Q. And where the shipment is handled over the dock, is the freight handled by your own dock men?

A. Yes.

Mr. LATOURETTE. That is all.

Mr. ARONOFF. The same objection. No questions.

Exam. ANGLE. You make the same objection as on the previous witnesses?

Mr. ARONOFF. That's right; and the same motion.

Exam. ANGLE. I will make the same ruling.

To the Witness: You are excused.

(Witness excused.)

Exam. ANGLE. We will take a short recess.

(A short recess was taken.)

Mr. LATOURETTE. I will call Mr. Shandalov.

Mr. HOPEWELL. At this time I would like to make a motion to require the Mound City Forwarding Company and Be-Mac Transport Company to produce their original records from April 1935 down to September 1935 showing the truck operations of N. E. Rosenblum with those companies. In the absence of those records, we are unable to cross-examine the witnesses that have been produced here on behalf of the Mound City Forwarding Company and Be-Mac Transport Company; therefore that
212 testimony would violate the rule against secondary evidence. It would be hearsay evidence. With those records here, we would have the opportunity to cross-examine those witnesses as to the accuracy of their books; but in the absence of those records we are helpless so far as the cross-examination is concerned.

Exam. ANGLE. You want to inspect the original records?

Mr. ARONOFF. That is correct.

Exam. ANGLE. You want the Commission then to issue a subpoena duces tecum?

Mr. HOPEWELL. That is my motion; to compel the production by those companies of the original records showing all transactions with N. E. Rosenblum from March 1935 down to October 1935.

Mr. LATOURETTE. First of all, it is not hearsay testimony. If these witnesses testified at my request they made an examination of their records, and following that examination their tes-

timony shows what was disclosed. Now, on page 13 of the record in the original hearing in this case there is an oral statement, a purely oral statement by this applicant that he hauled for Trans-American, Mound City Forwarding, Brashear, Highway Merchandise Carriers, and Viking Freight Company. Now, there were no records products by applicant in support of that testimony. It was purely oral in nature. We are now offering testimony to show, after examination by the companies, that
 213 there was no rental hauling done by Rosenblum for these companies, it having followed the examination of records; and it is as competent as the purely oral testimony given in the original hearing in this case.

Mr. HOPEWELL. The applicant at that time was not testifying from any records; he was testifying independent of any records. Therefore they had the privilege of cross-examination.

Exam. ANGLE. Do you intend to use this in the connection with filing of briefs, if you had these records here; is that correct?

Mr. HOPEWELL. That is correct.

Exam. ANGLE. Well, the matter of subpoena duces tecum may be taken up with the Commission and your motion preserved on the record here. In order to obtain those records, if you so desire. I will take the motion under advisement.

Mr. HOPEWELL. We would like, then, to reserve the right to cross-examine.

Exam. ANGLE. Yes.

Mr. LATOURETTE. I will call Mr. Shandalov.

WILLIAM SHANDALOV was sworn, and testified as follows:

Direct examination by Mr. LATOURETTE:

Q. State your name.

A. William Shandalov.

Q. What is your occupation, Mr. Shandalov?

214 A. A dispatcher.

Q. By whom are you employed?

A. Baulos.

Q. Is that Truman E. Baulos?

A. Truman E. Baulos.

Q. Is that the same Truman E. Baulos who is the applicant in docket number MC-36692, which is now pending before this Commission?

A. Yes, sir.

Q. How long have you been employed by Mr. Baulos?

A. Since June 23, 1938.

Q. Are you the same William Shandalov who is the applicant docket number MC-74145, an application pending before the Commission?

A. I am.

Q. You were at one time in the trucking business yourself, were you not?

A. Yes, sir.

Q. And when did you begin business?

A. In February 1936.

Q. Now, at that time were you in business as an individual or were you in business with other copartners?

A. I started with two other men, N. E. Rosenblum and Truman E. Baulos.

Q. And was a partnership formed at that time?

A. No, not at that time.

215 Q. Was there any arrangement at all between you and Mr. Rosenblum and Mr. Baulos in February 1936?

A. Yes, sir; it was an oral arrangement.

Q. An oral arrangement?

A. Yes.

Q. Well, was that in the form of a partnership arrangement between you?

A. Yes, sir.

Q. Was that oral arrangement later confirmed in writing?

A. Yes, we did.

Q. Do you know approximately the date the partnership was covered by written agreement?

A. March 1, 1937.

Q. I show you in the official files of the Commission in docket MC-13853 a photostatic copy of a document headed, "Partnership agreement" executed on March 1, 1937, according to the face of that document and signed with the names of Truman E. Baulos, William Shandalov, and N. E. Rosenblum; and ask you if that is the written partnership agreement to which you have previously referred?

A. It is.

Q. And was that the partnership agreement that was entered into at that time by the three parties?

A. Yes, sir.

216 Q. Now, beginning in 1936, did you have common terminal facilities with Mr. Rosenblum and Mr. Baulos?

A. I had.

Q. Did you have trucks at that time which were under your control?

A. Yes, I had.

Q. Did the other parties have trucks?

A. Yes, they did.

Q. Will you state for the record in just what way those trucks were used by the partnership, by the three parties whom we have named?

A. To haul freight.

Q. Were they used interchangeably by them? I mean, was a Shandalov truck used in Rosenblum's service and a Rosenblum truck used in Shandalov's service?

A. Sometimes they did.

Q. In other words, freight that was consigned in care of Shandalov might be handled on Rosenblum's trucks?

A. Occasionally.

Q. And freight consigned in care of Rosenblum might be handled on Shandalov's truck?

A. Occasionally, yes.

Q. What was the set-up as to credits between these three parties when either one or the other trucks was used in the hauling of freight?

A. Each truck to be credited; some was to be credited 217 thirty dollars a load and some was to be credited \$32.50 a load. Any revenue over that \$32.50 to go for expense of the terminal facilities and all expenses.

Q. And if there was any profit over and above the amount that remained after the truck hire was paid for, and after the dock and terminal expense was paid for, was that to go to the partners by way of a share profit in the operations?

A. We never did get to that yet.

Q. You never had any profits?

A. No.

Q. But your contract provides, does it not, that your profits and the losses are to be shared between the three parties?

Mr. HOPEWELL. The contract speaks for itself. That is leading and suggestive, and calls for a conclusion.

By Exam. ANGLE:

Q. Does the contract provide that, Mr. Shandalov?

The WITNESS. It does.

Q. The contract that you signed provides that?

A. Yes, it provides—

Exam. ANGLE. I will have to overrule the objection.

Mr. HOPEWELL. The contract is the best evidence.

Exam. ANGLE. He can testify as to the terms of the contract.

Mr. HOPEWELL. You have ruled on my motion?

Exam. ANGLE. Yes.

218

By Mr. LATOURETTE:

Q. State whether or not from February, 1936, until March 1, 1937, you operated as a partnership along the same lines as are set forth in the written partnership agreement dated March 1, 1937?

The WITNESS. A. Yes, sir; but verbal; it was verbal.

Q. It was a verbal partnership agreement prior to March 1, 1937?

A. Yes.

Q. And you operated under the same partnership agreement under that verbal arrangement as is set forth in that partnership agreement dated March 1, 1937?

A. I don't know whether you call it partnership or not, but we operated under the same agreement, under the same arrangement.

Q. Now, during that time did you and Mr. Rosenblum and Mr. Baulos carry insurance on your cargo that was carried and public liability and compensation insurance?

A. Yes; we did.

Q. Are you familiar with the type of coverage with respect to the parties named in those policies?

A. We had public liability and property damage, cargo insurance and compensation insurance.

Q. In whose interests or in whose favor were those policies?

A. In all three favors; in all three of us.

Q. And did the policies refer in any way to the fact that the three were doing business under any particular style
219 or name?

MR. HOPEWELL. I will object to object to that, on the ground that the policy itself would be the best evidence; and his testimony would be purely hearsay, and would not privilege us to cross-examine this witness on that subject. The policies themselves should be here, if there were such policies issued.

Exam. ENGLE. I will sustain the objection.

MR. LATOURETTE. I might make the observation at this point, Mr. Examiner, that on Saturday I talked with Mr. Walsh, of the Cobb-Walsh Insurance Agency and asked him if he would come to this hearing with his insurance records, without subpoena and he said that he would. I have been trying to contact him now; and, strangely, he cannot be reached, nor give some reason for his inability to attend. It may be he will be here later on in the hearing. And I am now informed by one of the protestants that in a telephone conversation he refuses to furnish the records unless he is subpoenaed by subpoena duces tecum.

Q. Did you at any time examine the insurance policies that were issued covering the cargo and public liability and compensation insurance policies?

A. I did.

Q. At that time did you observe and note how the policies were issued, with reference to the names that were in the policies?

220 Mr. HOPEWELL. Now, your Honor, Mr. LaTourette is asking the identical question with the Commissioner has ruled upon. I object, as purely hearsay, the policy being the best evidence. In the absence of the policy we have no way of cross examining this witness.

Exam. ENGLE. I will have to sustain the objection.

By Mr. LATOURETTE:

Q. Now, up until what date did you operate under the document headed "Partnership agreement" dated March 1, 1937?

A. Up to what date?

Q. Yes?

A. Up until I discontinued doing business, March 1, 1938.

Q. Do you know Rabbi H. F. Epstein?

A. Yes, I do.

Q. Do you recall a visit that you made to Rabbi Epstein in February 1938 with Mr. Rosenblum who is in the hearing room and Mr. Baulos?

A. I do.

Q. What was the purpose of that visit?

A. The purpose of that visit, to lay before him all our complaints and to see if we cannot come to some understanding about dissolving the partnership.

Q. Did you have any documents with you at that time?

A. I had that original contract.

Q. Are you referring now to the partnership agreement
221 executed March 1 1937?

A. Yes, sir.

Q. And did the three parties then discuss with Rabbi Epstein the question of dissolving the partnership as described in that document dated March 1, 1937?

Mr. HOPEWELL. I object to that. I don't believe it would be proper here. Apparently that was in the nature of some compromise and therefore it is not germane to any of the issues, what might have been said by this Rabbi. He was acting more or less in a confidential capacity.

Exam. ANGLE. He testified that plans to dissolve the partnership was discussed; of course, that question of partnership is an issue here.

Mr. HOPEWELL. He is talking now about a contract he had with the Rabbi.

Mr. LATOURETTE. About dissolving the partnership.

Exam. ANGLE. I think that anything which took place that he knows of, I think he can testify all right. I ~~see~~ no objection to that. I will have to overrule the objection.

Mr. HOPEWELL. Note our exception.

Mr. LATOURETTE. Read the question.

(Question read by the reporter.)

The WITNESS. Yes; we did.

Q. And was there an agreement then before the Rabbi to dissolve the partnership?

222 A. Verbal agreement; yes.

Q. Now, around the period February 18, 1936, did you carry an insurance policy which contained your name only, and extended coverage to you only as an individual?

A. On fire and theft and collision.

Q. Fire and theft and collision?

A. Yes, sir.

Q. Now, as to the cargo and public liability and compensation insurance, on and around the date February 18, 1936, did you carry cargo and public liability and compensation insurance?

A. Yes; I did.

Q. Were those policies, or that policy, if it was one, limited to your name only?

Mr. HOPEWELL. Going right back at the same thing, this Commissioner has ruled on. Object to it.

Exam. HOPEWELL. He knows whether he carried insurance or not.

Mr. HOPEWELL. I did not object to that; now, he is attempting to say what the policy contains.

Mr. LATOURETTE. He knows whether he carried insurance in a policy issued to him as an individual. He certainly would be competent to testify to that.

By Exam. ENGLE:

Q. Mr. Shandalov, where is that policy that is issued, that you referred to; where is that now—do you have a copy of it?

223 The WITNESS. Ano, I have not.

Q. Has it been destroyed?

A. Since that time we changed companies and it has been destroyed.

Q. You don't know how to get hold of it?

A. No.

Exam. ANGLE. I see no reason, then, if it is not available—

By Exam. ANGLE:

Q. Do you know any place where it is available?

The WITNESS. A. Well, the Interstate Commerce Commission would have a record of it.

Exam. ANGLE. I can't see why he cannot testify about his own insurance policy, under those conditions.

Mr. HOPEWELL. It gives us no way of cross-examining.

Exam. ANGLE. This is with reference to Mr. Shandalov himself, personally.

Mr. HOPEWELL. I have no objection to any policy issued to him alone.

Mr. LATOURETTE. I am asking whether or not there were any so issued.

Exam. ANGLE. His own individual case.

Mr. HOPEWELL. Then I withdraw the objection.

By Mr. LATOURETTE:

Q. My question was, Mr. Shandalov, whether or not, 224 with respect to cargo and public liability and compensation insurance, the policies for that coverage were issued in your name alone?

The WITNESS. No.

Q. Were there other parties included in those policies which covered or contained your name, relating to public liability and compensation insurance?

A. Yes.

Q. And cargo, also?

A. Yes, sir.

Q. What were the names of the other parties included with yourself?

A. N. E. Rosenblum, doing business as N. E. Rosenblum truck lines; the Truman E. Baulos, doing business as Truman E. Baulos; and the reason we did that, the reason we did have the insurance in three names, I understand that in order to save the deposit money. While they were in all three names on one policy the same amount of deposit applied on the three names as they would be on one. If you would have it on one individually you would have to have three times that much money.

By Exam. ENGLE:

Q. Is this the insurance policy that you say has been lost?

A. I haven't got it at present.

Q. It is not available?

A. No.

By Mr. LATOURETTE:

225 Q. Was there any reference to parties doing business as Overnite Freight Service in that policy?

A. It was.

Q. And what names were shown in that connection?

A. William Shandalov, doing business as Overnite Freight Service.

Q. Were any other names shown as doing business as Overnite Freight Service?

A. I don't recall that exactly, what it would be.

Q. You don't remember, then, whether or not the three parties were shown as doing business as Overnite Freight Service?

A. Well, I would not be able to tell exactly.

Q. How was the bank account of the parties kept?

A. At what date?

Q. In 1936?

A. Under the name of Overnite Freight Service.

Q. And did all the moneys from the three operations all go into that bank account?

A. Yes, sir.

Q. And the expenses paid out of it?

A. By the Overnite Freight Service.

Q. That covered the three operations?

A. Yes, sir.

Q. And at the time of the execution of the partnership agreement dated March 1, 1937, did the bank account continue to be carried in the name of Overnite Freight Service?

226 A. Yes, sir.

Q. And did it so continue up until you went before Rabbi Epstein in February 1938?

A. Yes, sir.

Q. Were checks on that account signed by you?

A. By me.

Q. Was any other signature required on the checks?

A. Yes; it was required the signature of the bookkeeper.

Q. Who was he?

A. Lee Andrews.

Q. And was he employed by the three parties?

A. Yes, sir.

Mr. LATOURETTE. That is all.

Exam. ENGLE. Any cross-examination?

Mr. HOPWELL. Yes; I am inclined to think there will be considerable.

Cross-examination by Mr. HOPEWELL:

Q. Mr. Shandalov, when did I understand you to say you started in the trucking business?

A. February 1936.

Q. Prior to that time hadn't you been in the trucking business under the name of Broadway Freight Service?

A. Yes, sir.

Q. How long had you been under the name?

A. Until I changed the name to Overnight Freight Service, February 1936.

227 Q. Do you recall when you first started in as the Broadway Freight Service?

A. In 1934.

Q. Then that continued until February 1936; and you changed the name then to the Overnite Freight Service?

A. Yes, sir.

Q. Do you recall where you were doing business under the name of the Broadway Freight Service; what location?

A. Broadway Freight Lines.

Q. What location were you?

A. 715 South Broadway.

Q. And then when you changed the name to Overnite Freight Service, were you at the same location?

A. No, sir.

Q. You moved to a new location?

A. Yes, sir.

Q. Do you recall where that was?

A. 1125 South Broadway.

Q. When you moved down to 1125 South Broadway you had a lease on that place, did you not?

A. No, sir; I just stayed there temporarily, about a few weeks, and then moved into 1409 or 1408 South 8th Street.

Q. Did you have a lease on that building down there?

A. I think I did.

Q. Do you recall about what time you moved into 1408
228 South 8th Street?

A. March 1, 1936.

Q. In whose name was the lease of the premises?

A. My name.

Q. Your name individually?

A. Yes, sir.

Q. And continued that way as long as you occupied that premises?

A. Yes, sir.

Q. Do you remember about how long you were there at South 8th Street?

A. Until August 1, 1937.

Q. And then you moved to 301 Geyer?

A. Yes, sir.

Q. The lease of the place over on Geyer Street, whose name was that in?

A. My name.

Q. Your name only?

A. My name only.

Q. And remained that way as long as you were there at 301 Geyer?

A. Yes, sir.

Q. When Mr. Rosenblum and Mr. Baulos severed their relations with you, you were still at 301 Geyer?

A. I did not get the question.

Q. On March 1, 1938, you were still occupying the premises at 301 Geyer?

229 A. No, until March 1, 1938.

Q. Until March 1, 1938, you were occupying the premises at 301 Geyer?

A. Yes, sir.

Q. Under the lease in your individual name?

A. Yes, sir.

Q. Now, you had a terminal in Chicago, or an office or something, did you not?

A. Yes, sir.

Q. You had a lease on that place up there, too; did you?

A. I did.

Q. In whose name was that lease?

A. In 1937 it was in my name.

Q. In your name only?

A. In my name only.

Q. After that lease expired, was it renewed, for the Chicago Terminal?

A. Yes, it was.

Q. On Packers Street, I believe it was?

A. In my name.

Q. Whose name was the new lease after your lease expired?

A. In what year?

Q. Well, you said you had a lease in 1937?

A. Yes.

Q. Did that lease continue up until March 1938?

230 A. Well, then I got out of business.

Q. But the lease, then, on the Chicago terminal was in your individual name up until the day that you quit business?

A. That's right; in 1937.

Q. Now, did you have any books in the business of the Overnite Freight Service?

A. Yes sir.

Q. Did you maintain a regular set of books—you had a regular set of books; did you not?

A. Yes.

Q. Are they here at the hearing?

A. No, they are not here.

Q. Are they available?

A. I think they are.

Q. Could you bring them in this afternoon?

A. I think I could.

Q. Those books, of course, were kept in the usual way by your bookkeeper?

A. Yes.

Q. I don't suppose you are very familiar with them, because that was kept up to the bookkeeper; is that correct?

A. Yes.

Q. Those books, I understand, were audited by a Certified Public Accountant from time to time; were they not?

A. At one time they were.

231 Q. In the early part of 1937 after you had been operating for about a year?

A. Yes, sir.

Q. A man by the name of Kahn—was he your accountant at that time?

A. He was.

Q. Adolph Kahn?

A. Yes; he was.

Q. A public certified accountant of St. Louis, Missouri; now, he made you an analysis of the books and records and made a report to you of your operations; did he not?

A. Yes, sir.

Q. Based upon the books that you kept there in the operation of your business?

A. Right.

Q. I will ask you, Mr. Shandalov, if you have ever seen those two documents before?

A. Yes; that is the report from Adolph Kahn.

Q. Made from your original records?

Mr. LATOURETTE: I object to that unless the witness has an opportunity to examine the document in full. I observe it re-

lates to Rosenblum and Baulos' operations also; and I don't want the witness to become confused.

By Mr. HOPEWELL:

Q. You have seen those before, I understand, Mr. Shandalov?

232 Mr. LATOURETTE: Well, now is that a different question or is it the same question?—I want to make the observation that there is reference in here to Baulos' trucks, analysis of Baulos' trucks; and I don't want the witness to testify that the document is something that it is not, unless he examines it.

Mr. HOPEWELL: I am not seeking to have him say that it is; I am asking if he has seen them before.

The WITNESS: This is a report for the period of February 1, 1936, to December 31, 1936, given to William Shandalov, doing business as Overnite Freight Service, St. Louis, Missouri. First we have a balance sheet as of December 31, 1936, for current assets and liabilities; and the next page is analysis of each individual account, or each individual truck, rather, which altogether were nine; the analysis of N. E. Rosenblum Truck Line, truck number 1—

By Mr. HOPEWELL:

Q. I just asked you if you had ever seen them, Mr. Shandalov; I will get to it in a minute. You have seen the reports before today?

A. Yes, I did.

Q. You are familiar with the report; that is what I am getting at?

A. I thought you wanted me to read them off.

Q. No; pardon me. You know the reports to be true from your books?

A. Yes, sir.

233 Q. The information, of course, contained in the reports came from your books and information you gave Mr. Kahn?

A. That is right.

Q. Is that same thing true of the other reports which is lying there?

A. This one?

Q. That one; yes, sir.

A. Yes, sir.

Q. That is for a different period than the first document you observed?

A. This is the latest period from January 1, 1937, to January 31, 1937.

Q. Made by the same accountant?

A. Made by the same accountant, Adolph Kahn.

Q. Made from your original books?

A. I believe so.

Q. And from information given to him by you?

A. The books.

Q. From the books?

A. Yes, sir.

Mr. HOPEWELL. I would like at this time to have these marked for identification.

Mr. LATOURETTE. I assume we will be furnished with copies?

Mr. HOPEWELL. For the parts of them that I introduce, 234 you will, yes.

Mr. LATOURETTE. I object to the introduction of a partial showing in this report. I do not think it is proper that a document which is intact shall have certain parts introduced and other parts excluded. I want the Commission to have a complete picture.

Mr. HOPEWELL. We have no objection to the introduction of the entire document.

Exam. ANGLE. Will you furnish copies?

Mr. HOPEWELL. We will furnish copies.

Exam. ANGLE. Have you any objection to it being marked for identification?

Mr. LATOURETTE. No; just so Brother Hopewell sends me copies.

Exam. ANGLE. They may be identified as applicant's Exhibits 7 and 8 for identification.

(Exhibits 7 and 8, marked for identification.)

By Mr. HOPEWELL:

Q. Mr. Shandalov, after this report of January 22, 1937, had been submitted to you—that is the document which the reporter has marked Applicant's Exhibit No. 8 and refers to the period of February 11th, 1936, to December 31, 1936; after this had been made up and delivered to you, did you have occasion to read it over and examine it?

A. I was reading it—I did read it.

Q. And I understood you to testify just a minute ago 235 it is correct?

A. He did.

Q. The report as made is correct?

A. Well, that is what Adolph Kahn wrote me, that the report is correct.

Mr. HOPEWELL. I would like to offer and read in evidence at this time, Mr. Examiner, from page 2 of Applicant's Exhibit 8—

Mr. LATOURETTE. Well, if it is an exhibit is not necessary to read it into the record; is it?

Mr. HOPEWELL. I would like to read it in the record; it is only very short.

Exam. ENGLE. Why not put it in the form of a question, Mr. Counsel and express the point you want to bring out. The whole thing will be in evidence. It is assumed the man that writes the final report would look over that exhibit.

By Mr. HOPEWELL:

Q. On page 2 of the exhibit, Mr. Shandalov, Mr. Kahn has an item here called History; is that part of the report correct?

Mr. LATOURETTE. Let him see it.

Mr. HOPEWELL. I thought he had read it.

The WITNESS. I presume it would be correct, because I am no bookkeeper; and that was what I had him for, to examine my books.

By Mr. HOPEWELL:

236 Q. That part of the report, I imagine was made up from information he got from you?

A. From the books.

Q. Then I would like to read it into the record——

Mr. LATOURETTE. We object to it being read into the record; it is a part of the exhibit.

Exam. ANGLE. The whole thing will be in the record. Ask the question on the same point you want to bring out particularly.

Mr. HOPEWELL. I want to bring out about the history of the company.

Exam. ANGLE. You might ask him.

By Mr. HOPEWELL:

Q. Let me read this to you, Mr. Shandalov——

Mr. LATOURETTE. We object to it; that is reading it in the record. It is an exhibit.

Mr. Hopewell. I will make it in the form of a question——

By Mr. HOPEWELL:

Q. I will ask you, Mr. Shandalov, if this part appearing under the word "History," on page 2 of Applicant's Exhibit number 8 as made up by Adolph Kahn, is correct, based upon your records?

The WITNESS. Right.

Q. "The firm began business on February 11, 1936, under arrangements whereby William Shandalov, an individual, would conduct the firm known as the Overnite Freight Service. As

explained to me this firm would hire trucks and do business as a common carrier"? 237

A. Right.

Q. That is correct; is it not?

A. That is correct.

Exam. ENGLE. We will recess until two o'clock.

(At 12:45 p. m. a recess was taken to 2:00 o'clock p. m.)

AFTERNOON SESSION—2:00 O'CLOCK P. M.

By Mr. HOPEWELL:

Q. Now, Mr. Shandalov, on page 3 of applicant's Exhibit No. 7, Mr. Kahn, the certified public accountant, shows a balance sheet of your operations. One of the items on here is net worth; investment of William Shandalov, \$3,445.63; that is correct, is it not?

A. If it was in the books it is correct.

Q. Now, during the course of your operations during 1936, also for 1937, you made out both state and federal income tax reports; did you not?

A. I don't remember.

Q. Do you remember whether Mr. Kahn, for you made out—

A. Mr. Kahn would be the one to be able to tell you that.

Q. Do you recall signing an individual income returns for your business for the year 1936?

A. No; I wouldn't remember that.

Q. What would be your best recollection as to whether you made individual returns covering your operations in 1936?

A. There were made some returns, but I don't remember 238 what it was; whether state, city, or federal.

Q. There was no return made on the partnership for 1936 or 1937?

A. The returns would be made individually.

Q. That is what I mean, if the returns were made—

A. They would be made individually.

Q. In other words, any income returns for N. E. Rosenblum would have been signed by him individually?

A. Yes, sir.

Q. And the returns for Truman E. Baulos would have been signed by him individually, if any were made; and if made by you they would have been signed by you individually?

A. That is right.

Q. You were required, of course, to make certain social security tax returns?

A. Yes.

Q. And those social security tax returns for 1936, 1937, and for the first quarter of 1938 were likewise made by the individuals?

A. Yes; they were made individually.

Q. In other words for the employees that N. E. Rosenblum had, those people that he hired, he made individual social security tax returns?

Mr. LATOURETTE. Object to what N. E. Rosenblum did.

By Mr. HOPEWELL:

239 Q. There was never a return made to the Social Security Department of the Internal Revenue Tax Collector on behalf of the alleged partnership, was there?

A. No; it was made individually.

Q. And that is true for 1936, 1937, and the first part of 1938?

A. Right.

Q. Had you known Mr. Rosenblum before he came into your terminal over on South 8th Street?

A. Yes; I did.

Q. How long had you known him before that?

A. Since 1934.

Q. And do you know what business he was in prior to February 1, 1936?

A. No; I did not.

Q. Did you know anything at all about his truck operations prior to the time he came there in your terminal?

A. Yes; I did.

Q. You knew he was in the trucking business before that time?

A. Yes.

Q. Did you know generally over what territory he operated his trucks prior to the time he came to your terminal there on South 8th Street?

A. Between St. Louis and Chicago.

Q. You had known Mr. Baulos for a while, too, before February 1, 1936?

A. Yes, sir.

240 Q. Were you familiar with his trucking operations?

A. Yes, sir.

Q. Do you know, generally speaking, between what points Baulos operated?

A. St. Louis and Chicago.

Q. Were you familiar with the character of services being rendered by Mr. Rosenblum as a trucker prior to the time—

A. Yes.

Mr. LATOURETTE. I object to this line of cross-examination, as not being germane to the direct examination. This witness' testimony related to the existence of a partnership between the parties.

Exam. ANGLE. The partnership, as I understand it, involved trucking operations; and the partnership standing alone by itself means nothing.

Mr. HOPEWELL. That's right.

Exam. ANGLE. And I would say that whatever he knows about those trucking operations, when they actually commenced, he can testify. For that reason I will have to overrule the objection.

By Mr. HOPEWELL:

Q. Do you know, generally speaking, the character of services rendered by Mr. Rosenblum prior to the time when he came to your terminal?

Mr. LATOURETTE. Object to that question; it is uncertain in form. The witness may not understand, the witness
241 may not know the character.

Exam. ANGLE. I will sustain the objection.

By Mr. HOPEWELL:

Q. Can you state, Mr. Shandalov, whether prior to February 1, 1936, Mr. Rosenblum hauled for the public generally, or were his operations, so far as you know, limited to certain—

The WITNESS. He was, in the truckers' language, wildcatting.

Q. In other words, he was hauling for other common carriers?

A. Hauling for any common carrier or any contract carrier who has freight.

Q. In other words, that time if he had it he was hauling for individual customers and likewise hauling from other common carrier terminals?

Mr. LATOURETTE. I object to that question. The witness did not say he was hauling for individual customers; he said he was hauling for any common carrier and contract carrier that would use him; in truckers' parlance, wildcatting.

By Exam. ANGLE:

Q. What do you mean by "wildcatting"?

A. A man who has a truck and is open to service to any reputable truck line who will call him up and ask him if he is available for taking a load from their—

Q. Then, that does not mean also he is available for hauling by individuals?

A. No.

242 Mr. LATOURETTE. My objection went to the point that this witness did not say he was hauling for individual

customers; he said he was hauling for contract carriers who are using his trucks.

Exam. ANGLE. That is the way he testified. If he actually knows about these things he can testify to them.

Mr. LATOURETTE. Counsel didn't put his question that way. He tries to supply there that this witness had said he hauled for individual customers.

Exam. ANGLE. He can testify to what he knows.

By Mr. HOPEWELL:

Q. Can you just briefly tell the Examiner what you know about Mr. Rosenblum's operations immediately prior to February 1, 1936?

The WITNESS. As I said before, he was wildecating only. That means that he was soliciting freight from other truck lines, legitimate truck lines.

By Exam. ANGLE:

Q. Would you be in a position to know whether or not he hauled for other shippers?

A. Yes; I am in a position to know that he at no time hauled for any shippers prior to February 1, 1936.

Q. Between what dates?

A. The first time he went into operation.

Q. When was that?

A. Some time in 1934.

Mr. LATOURETTE. It might be helpful to say to the
243 Examiner that by Mr. Rosenblum's own testimony in the original case is shown to be the nature of the operations; and that he hauled for any truck line that wanted to use his trucks. And he testified he did that up to February 1936.

Exam. ENGLE. That is all right, I just wanted to clarify the record.

By Mr. HOPEWELL:

Q. And then down to February 1936, Mr. Rosenblum's operations were out of your terminal on South 8th Street for a while and at 301 Geyer Street for the remainder of the time?

A. It was not from my terminal; it was from our terminal.

Q. Now, I believe you testified in December 1936, in connection with your application and which has been pending before the Commission.

A. A hearing was held in December 1936.

Q. You testified at that hearing?

A. I did testify at that hearing.

Q. And considerable was asked you at that time with reference to an alleged partnership; is that not correct?

Mr. LATOURETTE. I object to that, Mr. Examiner, please; the record speaks for itself as to what was asked and said at that hearing. And as I recall it, there is no definite statement in there. There may be, but anyway, the record speaks for itself.

Mr. HOPEWELL. I suppose I have a right to impeach him
244 about his own statements?

Exam. ANGLE. I think if he testified as to one thing before, he certainly would be entitled to testify at this time.

The WITNESS. I wouldn't remember my testimony unless I had the transcript in my hand to read. That is two years ago.

By Mr. HOPEWELL:

Q. You know, as a matter of fact, that at that hearing you testified there was no partnership, do you not?

Mr. LATOURETTE. Object; the witness said he wouldn't know unless he saw the records.

Exam. ANGLE. I think that he should answer the question.

The WITNESS. I would have to see the transcript to tell you whether I did testify and what did I say at that time.

By Mr. HOPEWELL:

Q. Did you testify in 1936, in December, in response to a question which was propounded to you, that you were partners with Truman B. Baulos and N. E. Rosenblum at that time?

Mr. LATOURETTE. I make the same objection. The witness said he couldn't tell unless he read the record.

Exam. ANGLE. Can you answer the question?

The WITNESS. If I recall correctly, there was no question put up as to whether it is a partnership or not.

Exam. ANGLE. Can you answer the question now?

245 The WITNESS. If I recall it correctly, at no time during that hearing was the question asked directly whether it is a partnership or not a partnership.

Exam. ANGLE. Can you answer the question now?

A. It was no question put up to me at that time—

Mr. LATOURETTE. If I understand the Examiner wants you to tell now whether there was a partnership?

A. There was.

By Mr. HOPEWELL:

Q. In connection with your application, in December 1936, you had an employee testify, a man by the name of Connor, did you not?—do you recall that, Mr. Shandalov?

A. I would appreciate answering that question if I would have that transcript in front of me, to tell you.

Q. Do you recall whether you had a man in your employ in December 1936 by the name of Connor?

A. Yes, sir.

Q. Do you recall that he testified at the hearing?

A. I believe he was called at the hearing.

Q. You called him on behalf of your application, did you not?

A. I think he was called by me.

Q. And he testified in your behalf, is that not correct?

A. Naturally, he would testify in my behalf.

Q. Were you present when the man testified at that hearing?

A. I don't get your question.

246 Q. Were you present when Mr. Connor testified before the Examiner in December 1936?

A. No.

Q. You recall that hearing, don't you, Mr. Shandalov, at the Coronado Hotel in December 1936 in connection with your application?

A. Yes, sir.

Q. For a certificate?

A. Yes, sir.

Q. And as one of your witnesses you produced a man by the name of Connor; is that right?

A. I don't remember if I called him for a witness or he was called as a witness by the Interstate Commerce Commission; I don't recall how he happened to be on the witness stand.

Q. Do you recall any of his testimony at this time?

A. I was not present at that time.

Q. Do you recall Mr. LaTourette exhibiting to him a check in an effort to show at that time that there was a partnership?

Mr. LATOURETTE. The witness said he was not present; I don't know how he could recall that that was done.

Mr. HOPEWELL. Maybe if I refresh his memory—

By Mr. HOPEWELL:

Q. Do you recall being present when Mr. LaTourette exhibited a check to the Examiner?

A. No; I do not.

247 Q. In an effort to show there was an alleged partnership at that time?

A. I was not at that hearing at the time when Mr. Connor testified.

Mr. HOPEWELL. You may examine.

By Mr. ARONOFF:

Q. Mr. Shandalov, do you recall if at any time you or any of your employees gave an explanation of your relationship with N. E. Rosenblum and Truman E. Baulos in the operation of your terminals?

Mr. LATOURETTE: I submit again, if the Examiner please, this is a matter that this witness is asked to tell what is in the transcript of the previous case; and that would be disclosed by that transcript.

Mr. ARONOFF. I am only asking him if he knows of any arrangement that was testified to.

Mr. LATOURETTE. That is the same thing.

Exam. ANGLE. I think if he knows a thing——

Mr. LATOURETTE. He has already said a half a dozen times he cannot remember what was testified on the hearing.

Exam. ANGLE. Can you answer that question of counsel's?

The WITNESS. No.

Exam. ANGLE. How do you wish your answer to stand, yes or no?

The WITNESS. No.

By Mr. ARONOFF:

Q. Then, is this correct, Mr. Shandalov; That you had
248 an arrangement whereby Baulos and Rosenblum were to share the terminal expense on a tonnage basis, considering the amount of tons they hauled during any stipulated time?

Mr. LATOURETTE. Object to that; the record shows the contract of partnership, and it has been identified in the original record; and the witness has testified they operated under that partnership; and any testimony seeking to vary the terms of that instrument would be incompetent.

Exam. ANGLE. That question had to do with this partnership arrangement——

Mr. ARONOFF. If this arrangement had existed there; I just want to know——

Exam. ANGLE. I think he may answer.

The WITNESS. As I testified before, that we were supposed to share in everything; to share in the expenses and on everything.

By Mr. ARONOFF:

Q. You are talking now about your terminal expenses?

A. On all the expenses which is in reference to anything above thirty dollars per load.

Q. Well, name the expense; what kind of expenses are you talking about?

A. Telephone, insurance, office help, terminals.

Q. And what basis were you supposed to share?

Mr. LATOURETTE. I object to that, the contract shows the
249 basis to each party, one third of the loss, one third of the revenue.

Mr. ARONOFF. In the first place, this contract dates from March 1, 1937; and he says he has been in business since February 1936.

Mr. LATOURETTE. The contract shows on its face it was in effect as a verbal contract prior to its being put in writing.

Mr. ARONOFF. It says "heretofore" which is not at all definite.

By Exam. ANGLE:

Q. This contract, does that cover all the contract arrangements you had with these two other parties?

A. (The WITNESS.) Yes.

Q. It covers everything?

A. Yes.

Mr. ARONOFF. That is dated from March 1, 1937, and says "we have heretofore"—

Mr. LATOURETTE. Yes; and heretofore means just as the dictionary indicates. And he testified they were operating under a verbal partnership up until this written partnership was entered into.

Exam. ANGLE. The question of partnership is at issue here. I think he certainly ought to reply to this question. It looks relevant to me.

By Mr. ARONOFF:

Q. The question that I asked, this arrangement that I mentioned here, on what basis this expense was supposed to be distributed; I asked if it was correct that it was supposed to be distributed on a tonnage basis?

A. No.

Q. And you say no?

A. No.

Q. Who was Mr. Connor?

A. Mr. Connor was the bookkeeper and general traffic manager.

Q. For whom?

A. For the Overnite Freight Service, N. E. Rosenblum Truck Lines and Balous Truck Lines.

Q. And during what times?

A. From February 1, 1936, to January 1, 1937.

Q. Mr. Examiner, may I have just a five minute recess, to look at—

Exam. ENGLE. Take a five minute recess.

(A short recess was taken.)

By Mr. ARONOFF:

Q. Mr. Shandalov, you say that Mr. Connor was your traffic manager and office manager; is that it?

Mr. LATOURETTE. I object to that. He said he was the traffic manager and office manager for all three parties.

By Mr. ARONOFF:

Q. For all three parties——

A. For all three.

Q. You were in this room at various times when Mr. Connor's testimony was given?

Mr. LATOURETTE. He didn't say that; he said he was
251 not in the room.

By Mr. ARONOFF:

Q. Well, as a matter of fact you know he was present.

Mr. LATOURETTE. Are you trying to put me on the witness stand?—I didn't say anything.

Exam. ENGLE. Can you answer the question counsel asked?

By Mr. ARONOFF:

Q. I asked you were you present at any time when Connor's testimony was given?

A. Maybe I was.

Q. Well, don't you know?

A. I don't remember.

Q. You wouldn't remember, then, if what he said was correct or not?

A. Regardless if I was there or not, anything Mr. Connor said would be correct.

Q. Would be correct?

A. Would be correct.

Q. Now, I am going to repeat the question that was asked by Mr. LaTourette to you at that time: "Now, will you explain just under what arrangement the Overnite Freight Service pays the drivers of the N. E. Rosenblum Truck Lines for freight apparently routed by N. E. Rosenblum Truck Lines?" And your answer was "I will have my manager explain that."

A. That's right.

Q. Now, whom did you mean by your manager?

A. Mr. Connor.

252 Mr. ARONOFF. Now, at page 131, Mr. LaTourette.

Mr. LATOURETTE. All right.

By Mr. ARONOFF:

Q. There was this question asked of Mr. Connor: "(By Mr. Aronoff.) Explain the transaction fully, will you, Mr. Connor?" "Answer: I might say this, Mr. Commissioner: N. E. Rosenblum Truck Lines operate out of our terminals, both in St. Louis and Chicago. The operation of that line as such is entirely separate from the operation of the Overnite Freight Service. The facilities, in so far as the terminal is concerned, and in so far as the other expenses, such as telephone, clerical help, dock help,

and other overhead expenses, are proportionately charge as between those lines, on a tonnage basis." "Rosenblum Truck Lines are credited—I might say there that Overnite Freight Service has occasion, quite often, as the movement of freight requires, to employ, or lease, or transact, as the term might be used, additional pieces of equipment other than their own individually owned equipment." "They do employ quite often trucks owned by Rosenblum Truck Lines. In every instance the Rosenblum Truck Lines are credited with whatever may have been the agreed basis for handling that load."

A. Will you repeat the last few lines there?

Q. "They do employ quite often trucks owned by Rosenblum Truck Lines. In every instance the Rosenblum Truck Lines are credited with whatever may have been the agreed basis for handling that load." Now, is that the correct situation
253 that existed?

A. As far as Mr. Connor was concerned it was correct.

Q. As far as he is concerned it was correct?

A. It was correct; yes.

Q. He was your manager in charge of your records and books?

A. Yes, as far as Mr. Connor was testifying.

By Mr. HOPEWELL:

Q. By the way, Mr. Shandalov, what caused you to cease operations about February 28th, 1938?

Mr. LATOURETTE. I object to that unless there is some relevancy shown. It seems to be entirely outside of the issue here. His application has now been disposed of.

Mr. HOPEWELL. We still have the question of the alleged partnership, and that is when he said it was dissolved. The foundation for further impeachment.

Exam. ANGLE. The witness may answer.

The WITNESS. Well, Rosenblum and Baulos decided that they have all the business they want right now, and they don't need the Overnite Freight Service any more; and at the conference they decided to pull out and leave me holding the bag.

By Mr. HOPEWELL:

Q. At that time the Overnite Freight Service was heavily indebted, were they?

A. Being that everything was in the Overnite name; yes, the Overnite was in debt.

Q. About thirty-six hundred dollars?

A. I don't recall the amount; but it was in there
some place.

254 Q. Would you say that was about the correct amount?

A. Possibly that is correct.

Q. Over and above its assets?

A. Yes.

Q. Now, at that time, around February 26th or 27th, or 28th, 1938, you conferred with Mr. Rosenblum and Mr. Baulos in Mr. Aronoff's office and also in my office with reference to the sale of your business, did you not?

A. I didn't quite get the question.

Q. I say, around the latter part of February 1938 or the first part of March of the same year you conferred with Mr. Aronoff's office and also in my office with Mr. Rosenblum and Mr. Baulos, with the idea of trying to get them to take over the Overnite Freight Service business, didn't you—to buy you out, in other words?

Mr. LATOURETTE. The business, or his interest in the partnership, which?

Mr. HOPEWELL. Just let him answer, if you will, Mr. LaTourette.

The WITNESS. A. Yes, I did stop at your office and offer Rosenblum and Baulos to buy me out.

By Mr. HOPEWELL:

Q. And you were also over at Mr. Aronoff's office there one afternoon late, or evening, at which the same thing was discussed, when I was present?

A. Yes, sir.

Q. In other words, you offered to let Baulos and Rosen-
255 blum to buy out the business of the Overnite Freight Service?

A. Right.

Q. Which would have necessitated them assuming the debts of that company?

A. Right.

Q. Now, it was after they refused to buy out the business that you wrote letters and circulated letters of this alleged partnership agreement?

A. That is right.

Q. Up until that time you had never given anyone, even Mr. LaTourette, a copy of the alleged partnership agreement, had you?

A. No.

Q. That had remained secret within your bosom up to at least February 1938?

A. That is right.

Q. But after Rosenblum and Baulos decided they did not want to buy out the Overnite Freight Service and the creditors began to crowd you heavily on the debts, then you made up copies of this partnership agreement and either handed to them personally or sent through the mail?

A. That's right.

Q. And in that you did everything that you possibly could to shoulder the responsibility over on Rosenblum and Baulos?

A. Right.

256 Q. Now, at the time that Rosenblum and Baulos withdrew from the terminal over at 301 Geyer Avenue, the Overnite Freight Service owned quite a bit of office fixtures and equipment; and likewise owned some office fixtures and equipment in Chicago, Illinois; is that correct?

A. When I say the "Over Nite" I mean all three of us owned fixtures here in St. Louis and in Chicago.

Q. Well, I said the Over Nite Freight Service?

A. Well—

Mr. LATOURETTE. Well, let the witness say whether he understands what you mean by "Over Nite Freight Service."

The WITNESS. That is what I am trying to explain.

Mr. LATOURETTE. You mean the three parties, Baulos, Rosenblum, and yourself?

A. The three parties.

By Mr. HOPEWELL:

Q. Well, now, you know that under the statute of the State of Missouri you are required to file an affidavit with the Secretary of State when you are operating under what we call a fictitious name?

Mr. LATOURETTE. I object, unless the witness is qualified as knowing the law.

Mr. HOPEWELL. I think my question was such—

Exam. ANGLE. Do you know that you are required to file with the Secretary of State?

The WITNESS. Yes, I found that out after the first hearing; they asked me if I have my fictitious name filed. I
257 found out under the law of the State I am supposed to do it.

By Mr. HOPEWELL:

Q. After you learned that under our statute here in the State of Missouri you were required to file with the Secretary of State an affidavit showing who was the owner of the Over Night Freight Service, you did that, did you not?

A. I did.

Q. You filed an affidavit with the Secretary of State at Jefferson City, Missouri, in which you swore you were the owner of the Over Nite Freight Service?

A. Yes, I did.

Q. And that has been several months ago, hasn't it?

A. Several months?

Q. That was probably in the fall of 1936?

By Exam. ANGLE:

Q. Just what date?

A. I wouldn't recall the date; but it was late in 1936, I believe right after the first hearing.

By Mr. HOPEWELL:

Q. Was it about December 19, 1936, to be exact?

A. That would be about correct.

Q. I will show you another document which I propose to have identified as an exhibit, and ask you if you ever saw that before, Mr. Shandalov?

A. Yes, I recognize that.

Q. Do you recognize your signature anywhere on it?

A. Yes, I do.

258 Q. You did sign it?

A. I did.

Q. Now, I will show you two checks and ask you if you ever saw those two before?

A. I did.

Q. Both of them bear date February 28, 1938?

A. Correct.

Q. One of them made out to you individually for seventy-five dollars?

A. Right.

Q. The other one made out to the Over Nite Freight Service for two hundred and seventy-five dollars?

A. Right.

Q. Mr. Reporter, will you mark this Applicant's Exhibits 9, 10, and 11 for identification?

(Exhibits 9, 10, 11, were marked for identification.)

By Mr. HOPEWELL:

Q. Now, February 28, 1938, when Mr. Baulos and Mr. Rosenblum withdrew from the Over Nite Freight Service, you sold them all of the office equipment in St. Louis and in Chicago, and also the garage equipment; is that not correct?

A. I sold my part of it.

Q. That is as is evidenced by this bill of sale which I exhibited to you a minute ago and which we have had identified as applicant's Exhibit 11, for identification?

A. Right.

259 Q. Then Mr. Rosenblum at the same time gave you a check payable to the Over Nite Freight Service for two hundred and seventy-five dollars?

A. I sold my part of it and I got a check from Rosenblum for two hundred and seventy-five dollars, deposited it in the bank to

pay some of the obligations you just mentioned, of thirty-six hundred dollars.

Q. And at the same time and on the same date he gave you another check for seventy-five dollars to apply on the purchase price of the same equipment?

A. I don't know what that check was for. The personal check probably was given me for a different purpose; I wouldn't know what that was given for. We interchanged checks at different times.

Q. At any rate, he gave you checks totally three hundred and fifty dollars in connection with the bill of sale I have been talking about?

MR. LATOURETTE. Well, now, the witness said the check for seventy-five dollars was not a part of it; and I believe the bill of sale itself would indicate that it was not.

EXAM. ENGLE. What is the objection, Mr. LaTourette?

MR. LATOURETTE. The witness said he didn't know what the seventy-five dollar check was for; that they interchanged checks at various times. And, furthermore, the bill of sale indicates two hundred and seventy-five dollars which is check number 116, which indicates on its face that the check for seventy-five dollars had no connection with it.

EXAM. ENGLE. It seems to me that the check for two hundred and seventy-five dollars and the bill of sale here are in agreement. Could you develop that another way, what that seventy-five dollars was for?

By MR. HOPEWELL:

Q. Do you recall, Mr. Shandalov, anything at all with reference to the check in the amount of seventy-five dollars, dated February 28th, 1938, which I just exhibited to you?

THE WITNESS. Yes, I remember getting a check for seventy-five dollars on the same date; when I got a check for two hundred and seventy-five dollars.

Q. But you do not recall what Mr. Rosenblum gave it to you for?

A. No.

Q. Now, I will ask you if you have ever seen this document, bearing date March 15, 1938?

A. Yes.

Q. Does that have your signature anywhere on there?

A. It has.

Q. The Mr. Lee Andrews mentioned on there was your book-keeper at that time?

A. That is right.

MR. HOPEWELL. May I have that marked Applicant's Exhibit 12 for identification?

261 (Exhibit marked No. 12 for identification.)

Mr. LATOURETTE. I wonder if we can have a recess at this time for a few minutes, so I could have the examiner sign a document for me.

Exam. ENGLE. Yes.

(A short recess was taken.)

By Mr. HOPEWELL:

Q. Now, Mr. Shandalov, after you wrote this letter which you identified, dated March 15, 1938, to Mr. Lee Andrews, your book-keeper, did he turn over all the checks to you that were received by him and made payable to the Over Nite Freight Service?

A. A few small checks.

Q. What checks were received after this letter was written to him he delivered them to you in obedience to this letter which you had written him?

A. Yes.

Q. And, of course, you deposited the checks yourself, they being the—to pay the expense of the Over Nite Freight Service?

A. I guess so.

Q. Would that be your best recollection?

A. Yes, sir.

Q. I notice you signed this William Shandalov, doing business as the Over Nite Freight Service, March 15, 1938; was that correct at that time?

A. Let me see that? What was your question, now?

262 Q. I notice that that letter has the notation right below your signature, "Doing business as the Over Nite Freight Service."

A. I still don't get that question.

Q. Did you dictate that letter?

A. Yes; I dictated that letter.

Q. You told Mr. Lee Andrews how to write it, did you not?

A. That's right.

Q. Now, I have a group of insurance policies, Mr. Shandalov; I wonder if you have ever seen those before?

A. Yes, I did.

Q. I believe each one of them was issued to you?

A. Yes, they are all correct.

Q. They are various dates, 1936 and 1937 and 1938?

A. One is August 1, 1937; August 15, 1937.

Q. That is when they expired, is it not?

A. April 15th—oh, this expires—that would be April 5, 1937? I don't recall at no time the policy on that date. However, I might be wrong.

Q. You got a bill for it; I imagine, you paid it?

A. No, this don't mean a thing. On August 5, would be expires August 15th, 1937; that would mean that I got it August 15th, 1936; and that is the Home Insurance Company, for cargo; that's right; that would mean that this one I got earlier than that yet, on April 15th. I don't recall this policy on that date, on April 5th, 1937.

263 Q. You think this particular policy number—

A. I don't remember that policy at all.

Q. You wouldn't say it was erroneously issued, though, would you, Mr. Shandalov?

A. I doubt it. After all, that policy could be gotten at this time, too, as far as that is concerned. I don't remember that policy ever being handed to me.

Q. Do you remember that bill being sent to you by the Cobb Walsh Insurance Agency back there in 1937?

A. I get a lot of statements from Cobb-Walsh Agency, which is their particular form of bill; but I do not recall this particular form of policy being handed to me April 1937.

Q. That particular policy that you do not remember is number 830, and issued by the Springfield Fire & Marine Insurance Company?

A. That is correct.

Q. The other four policies, do you recall those?

A. This is the cargo insurance; that is correct; and Commercial standard—Mr. Hopewell, is that a copy of that one?

Q. No; they are two different policies?

A. Commercial Standard would be for compensation; yes, this is compensation—let's see this policy; the same thing. Oh, yes; that is supposed to be two policies, one for Missouri and one for

Illinois; that is correct. Those two policies are correct, those two and this one, and this one. But, I simply have to refresh my memory on this one. Maybe it was issued, and I don't remember.

Q. Now, those four policies that you are sure that were issued, were they issued to you correctly as to names?

A. Right.

Q. Issued to William Shandalov doing business as the Over Nite Freight Service; that was correct, was it not?

A. Sure.

Q. Likewise this policy, William Shandalov doing business as Over Nite Freight Service?

A. That is correct; yes, that is the way we told the insurance agency to make them.

Q. You told them that yourself?

A. Yes.

Q. This policy dated August 1, 1937, and expiring August 1, 1938—

Mr. LATOURETTE. I would like to have counsel state the date attached to each policy.

Mr. HOPEWELL. I would be glad to: Here is policy number 8384, dated December 8th, 1936, expiring December 8th, 1937; here is policy number TM-8537 issued by the Home Insurance Company, dated August 15th, 1936, expiring August 15, 1937; and policy number WC-24032, dated August 1, 1937, expiring August 1, 1938, Commercial Standard Insurance Company; and policy number WC-22021 issued by the Commercial Standard Insurance Company, dated August 1, 1937 expiring August 1, 1937.

Mr. LATOURETTE. Now, does counsel have the policies that were in effect on February 18, 1936?

Mr. HOPEWELL. No. These are the only ones I have.

The WITNESS. I withdraw my previous statement; I was confused on the date. That policy was issued correctly.

By Mr. HOPEWELL:

Q. Now, policy number 830 issued by the Springfield Fire & Marine Insurance Company dated April 5, 1937, expiring April 5, 1938; your testimony now is that all these policies were issued?

A. Correct.

Q. And were issued upon information given by you to the insurance agency?

A. Correct.

Mr. HOPEWELL. Mr. Reporter, will you identify that bunch of policies as our exhibit number 13?

(Documents marked "Applicant's Exhibit 13" marked for identification.)

Mr. LATOURETTE. Is counsel willing to produce policy written by the Cobb-Walsh Insurance Agency, February 19, 1936, covering cargo, public liability and compensation insurance?

Mr. HOPEWELL. I have never had the policy; I don't know if there was one in existence—

Mr. LATOURETTE. Are you willing to have an examination of the records made to determine if you did not have a policy issued as of that date in the name of William Shandalov, N. E. Rosenblum, and Truman E. Baulos doing business as Over Nite Freight Service, and N. E. Rosenblum doing business as Over Nite Truck Lines?

Mr. HOPEWELL. If I understand, Mr. Shandalov testified that such a policy was issued?

Mr. LATOURETTE. Are you willing to admit that policy dated February 8th, 1936, to read in main as follows: William Shandalov, N. E. Rosenblum and Truman F. Baulos, doing business as Over Nite Freight Service?

Mr. HOPEWELL. No; no, as I understand the policy was issued for William Shandalov doing business as Over Nite Freight Service, N. E. Rosenblum doing business as Rosenblum Truck Lines, and William E. Baulos, doing business as Baulos Truck Lines?

Mr. LATOURETTE. Is that correct?

Mr. HOPEWELL. That is what Mr. Shandalov testified.

The WITNESS. I would not recall if that is the way you put up the question; I would not recall that.

Mr. LATOURETTE. I will clear that up—but, as I understand it, you are unable to produce the policy issued February 8, 1936 through Cobb-Walsh Agency covering these same operations?

Mr. HOPEWELL. That is correct; I do not have the policy, and never had the policy; and it is not in Mr. Rosenblum's office.

267 By Mr. HOPEWELL:

Q. I will ask you, Mr. Shandalov, if you have ever seen that document before?

The WITNESS. A. Yes, I did.

Q. That bears your signature?

A. Yes, it does.

Q. The same with Mr. Baulos and Mr. Rosenblum?

A. Yes, sir.

Mr. HOPEWELL. Mark that "Applicant's Exhibit 14," for identification.

(Exhibit 14 marked for identification.)

Q. I will ask you, Mr. Shandalov, whether over at the warehouse at 301 Geyer Avenue you took out the water service in your name, doing business as Over Nite Freight Service?

A. Yes, I did.

Q. You put up the required deposit yourself, and made that arrangement?

A. I paid for what?

Q. You paid for the water service there yourself?

A. Over Nite Freight Service paid.

Mr. LATOURETTE. When you say "Over Nite Freight Service" do I understand you, for the purpose of the record to be embracing these three operators, so I do not have to go over all that?

A. That's right.

By Mr. HOPEWELL:

Q. You made the application for the water license, did you?

268 A. I presume; I don't remember. Otherwise, they wouldn't give me any water.

Q. Do you recall whether you did it, or whether you had Mr. Andrews or Mr. Connor do it for you?

A. I wouldn't remember that.

Q. Do you recall seeing that document before, Mr. Shandalov?

A. Yes, that is the water meter receipt.

Q. Made out William Shandalov, doing business as Over Nite Freight Service?

A. Made out William Shandalov, Over Nite Freight Service.

Q. 301 Geyer?

A. 301 Geyer; that's right.

Q. Do you recall this credit memorandum coming through from Cobb-Walsh?

A. Yes.

Q. That is correct, is it not?

A. I don't know whether it is correct; but I see it is the Cobb-Walsh Credit Memorandum.

Q. I mean for insurance?

A. For insurance; yes, that is correct.

Q. Do you recall seeing these notes before, these documents?

Mr. LATOURETTE. Are these documents, may I inquire, before the witness answers, taken from the records of the Rosenblum Truck Lines?

Mr. HOPEWELL. I can't answer that; they are here.

269 Mr. LATOURETTE. Well, are they part of the records of the Rosenblum Truck lines?

Mr. HOPEWELL. They are part of the records of the Over Nite Freight Service, William Shandalov.

Mr. LATOURETTE. You didn't take these out of your records?

Mr. HOPEWELL. I didn't ask him that, Mr. LaTourette.

Mr. LATOURETTE. You asked him whether or not they are Over Nite Service records.

Mr. HOPEWELL. I asked him if those were his signatures on those notes.

The WITNESS. It is my signature.

By Mr. HOPEWELL:

Q. On all three of them?

A. On all three of them.

Q. Dated March 15, 1937?

A. All three of them.

Q. Payable to the Mutual Bank & Trust Company here in St. Louis?

A. That is correct.

Q. Bearing the written in notation, "Over Nite Freight Service, by William Shandalov?"

A. That's right.

Q. That is your own handwriting?

A. That is right.

Q. Your own handwriting on all three of them, are they not?

A. Just the same.

270 Q. When you put that on there, of course, that was correct, was it not?

A. What?

Q. When you made this loan at the bank and signed it that way, you signed it correctly, didn't you?

A. Yes, sir; I did.

Q. This document which is a lease of the Chicago Terminal Warehouse, do you remember ever seeing that before?

A. Yes, I do.

Q. That is dated the 4th day of March 1937?

A. Yes, sir.

Q. Just a few days after you claimed you had entered into this contract and partnership?

A. Yes, sir.

Q. That is made out between G. H. Hammond Co., lessor, and William Shandalov doing business as Over Night Freight Service as the lessee?

A. That's right.

Q. You gave the G. H. Hammond Co. the information on which that was drawn up?

A. Yes; that is my signature.

Q. I say you gave them the information under which they drew up this document, didn't you?

A. Yes, I did.

271 Q. You, of course, told them what to put in here on the top of it and on the bottom of it?

A. No.

Q. You saw this down here, this "doing business as Over Nite Freight Service"?

A. That came in from Chicago, everything the way it is; all I had to do was to put in my name.

Q. That came in after you talked to somebody?

A. Came in from Chicago.

Q. But, as I understand, you talked to some officer of the Hammond Company?

A. That is right.

Q. Gave them the information; and after that they drew it up and you signed it?

A. Right.

Q. In April 1938, do you recall filling out that little slip there which is addressed to the Editor of the Power Wagon?

A. Yes; I did.

Q. That is your name on it?

A. My name.

Q. The information that you have shown on there is correct, is it?

A. That is correct.

Q. That you are the owner of the Over Nite Freight Service?

A. That is right.

Q. And your home address is 4742 Vernon Avenue?

272 A. That is right.

Q. Now, I will show you a Social Security return for the month of October 1937; does that bear your signature?

A. That is my signature.

Q. And it was made out over here to the Over Nite Freight Service?

A. Right.

Q. And over your signature, in your own handwriting, is the word "Owner?"

A. Right.

Q. Originally that was sworn to and filed in the Social Security Department of Internal Revenue Office?

A. It was made out in my office; yes.

Q. It was sworn to before a notary, wasn't it?

A. I imagine it was.

Q. And you filed similar returns to this one here for various months of 1937?

A. That is right.

Q. In the same manner?

A. That is right.

Mr. HOPEWELL (to the reporter). Mark those please, as Applicant's Exhibits 15, 16, 17, 18, 19, and 20 for identification.

(Exhibits 15, 16, 17, 18, 19, and 20 marked for identification.)

By Mr. HOPEWELL:

273 Q. One of the debts of the Over Nite Freight Service is the Social Security Account; is that correct?

A. Yes.

Q. Based upon these returns which you have just testified that you made to the Internal Revenue Office?

A. I didn't get your question.

Q. I say, the indebtedness is based upon returns that you made to the Social Security Department of the Internal Revenue office?

A. Right.

Q. Now, after Mr. Baulos and Mr. Rosenblum withdrew from the terminal there on Geyer Avenue, you took all the books with you?

A. Yes.

Q. And you still have those in your possession?

A. Yes; I have.

Q. In other words, Rosenblum or Baulos made no attempt to take the books?

A. I don't know whether they would make an attempt or not; maybe I was ahead of them.

Q. I see; you got them before they could get them?

A. That is right.

Q. And have so far been able to keep them?

A. That is right.

Q. Now, when you claim to have gone into partnership in the early part of 1936, did you put any money into the business at that time?

274 A. All three of us put in money then.

Q. How much did you put in, in February 1936?

A. About fifty dollars apiece.

Q. About fifty dollars apiece?

A. That is right.

Q. You owned some office equipment and garage equipment at that time?

A. No; no equipment was there, no office and no garage equipment.

Q. Did you later buy all this equipment that you finally had?

A. Well, that equipment which you have in exhibit 4 was bought since February 1936, gradually, piece by piece.

Mr. LaTOURETTE. You mean the exhibit being the alleged bill of sale; that is exhibit 11?

The WITNESS. That is correct.

Mr. LaTOURETTE. That was all bought since February 1936.

The WITNESS. That is correct, since February 1936.

By Mr. HOPEWELL:

Q. You have never brought any kind of an action to have the alleged partnership dissolved, have you, Mr. Shandalov?

A. No, sir.

Q. In other words, you have never gone into the Circuit Court here in St. Louis and asked a Court to fix the responsibility as between the three of you, and have the partnership dissolved?

A. I am afraid I didn't get your question.

Q. Well, it has been explained to you by your counsel that if there had been a partnership you could go into our Circuit Court to have it dissolved, can you not?

Mr. LATOURETTE. You are not referring to me, are you, Mr. Hopewell?

Mr. HOPEWELL. No—you may have told him that, too, Mr. LaTourette.

Mr. LATOURETTE. No; he didn't consult me about the dissolution of the partnership. I want the record to be clear on that.

By Mr. HOPEWELL:

Q. Has any attorney in St. Louis told you that if there had been a partnership existing you could go into our Circuit Court and have it dissolved?

A. Yes.

Q. You knew you could do that?

A. Yes; I knew.

Q. Up to the present time you have never seen fit to take such procedure?

A. It takes \$150.00 to take such procedure; and I have never had the money to start it with.

Q. At any rate, you have never done it?

A. Because I have not got any money to do it.

276 Q. Now, after the 28th of February 1938, you had your bookkeeper write letters to some of the creditors explaining to them that you were the sole owner of the Over Nite Freight Service, and that remittances should be made to you?

A. If you will produce me a letter I will acknowledge it or deny it; otherwise I don't recall that.

Q. Do you recall Mr. Lee Andrews writing a letter over your signature to Sears Roebuck in Chicago?

A. No; I do not.

Q. Do you recall sending a letter to any other creditor in which you told them that you were the sole owner of the Over Nite Freight Service, subsequent to February 1938?

A. No; I don't recall that.

Q. Neither Mr. Baulos nor Mr. Rosenblum have collected any of the accounts receivable that were due the Over Nite Freight Service, have they?

A. Yes; they did.

Q. And accounts that were due the Over Nite Freight Service?

A. Yes, sir.

Q. Do you recall what account it was, or accounts?

A. I don't recall; but the Chicago office, in which Mr. Baulos was in charge in Chicago, collected \$197.00; and all he did is

to send in a report in here what he did with the money. And he collected that money and never did send down the money here.

277 Q. \$197.00—was that charged to his account?

A. No; it was not charged to anybody's account; it was just taken, that money, and used for other purposes than payoff the Over Nite indebtedness.

Q. As I understand, then, he just collected one hundred and some odd dollars that belonged to you, and used it for obligations—

A. They paid off with that, I understand, ice bills which was billed to Rosenblum and Baulos, and other bills; but not Over Nite Freight Service.

Q. In other words he took one hundred and some odd dollars of your money and paid his own bills and some of Rosenblum's bills?

A. That is right.

By EXAM. ENGLE:

Q. When was that, Mr. Sandalov?

A. It was during the time when I was out of the business already.

Q. About what time?

A. About late February 1938.

By Mr. HOPEWELL:

Q. I believe you testified this morning that you never had said anything to anyone about being an alleged partnership under creditors started pressing you pretty hard, around February, this year?

A. Repeat that question.

Q. I understood you this morning when you testified you said you had never disclosed the fact that there was an alleged partnership between you and Mr. Rosenblum and Mr. Baulos
278 until after February 1938, when you were being pressed pretty hard by a number of the creditors of the Over Nite Freight Service?

A. The first time I ever disclosed about the partnership was when we went to the Rabbi; before that time nobody ever knew anything about the partnership.

Q. That was early March 1938?

A. No; February.

Q. The latter part of February?

A. About the latest February.

Q. By the way, when you were there you left the original contract with him?

A. Yes; I did.

Q. You never did give that original contract to Mr. LaTourette?

A. No; I didn't.

Q. He at no time ever had the original of that contract in his possession, did he?

A. No; he didn't.

Q. Was it your idea in circulating these different copies of that alleged partnership agreement that you could get the creditors to bear down on Rosenblum and Baulos for the indebtedness of Over Nite Freight Service?

A. I did write a letter to each and every creditor, the bank, on thus and such a date I was forced out from the business by my partners; therefore they will have to look for their
279 money to the partners; and also attached a copy of the partnership agreement.

Q. And that was done after several of them had threatened to sue you, I believe, on the debts of the Over Nite Freight Service?

A. It was done the early part in March.

Q. Up to that time had you been threatened with suits by the creditors?

A. Yes; I was.

Mr. HOPEWELL. At this time, if the Examiner please, I would like to offer and introduce in evidence Applicant's Exhibit—pages 1, 2, and 3 of Applicant's Exhibit number 7.

Mr. LATOURETTE. To which we, of course, object, Mr. Examiner; on the ground that we believe the exhibit in its entirety should be introduced. One part standing alone does not give a true story.

Exam. ANGLE. You do not have any objection to introducing this whole document, have you?

Mr. HOPEWELL. None whatever, if we get an opportunity to have the remainder of it photostated. I have the three pages which we wish to introduce photostated; but I have no objection to introducing the whole of it.

Exam. ANGLE. I understand, and I take it that you understand when you introduce these exhibits here and they go to the reporter you won't receive them back?

280 Mr. ARONOFF. That is why we just want to introduce a portion of it.

Mr. LATOURETTE. We have a special reason for wanting it all introduced.

Mr. ARONOFF. We have no objection to having it all introduced. Then I desire to offer in evidence Applicant's Exhibit number 8, pages 1 and 2 thereof. I presume, the same objection?

Mr. LATOURETTE. The same objection.

MR. HOPEWELL. Which means we will have to have the entire exhibit photostated?

EXAM. ENGLE. You can turn them over to the reporter and make arrangements with him to have copies made of them. He will have to have those, otherwise they will be of no force, as far as your case is concerned.

MR. HOPEWELL. Now, I desire to offer in evidence Applicant's Exhibits 9, 10, and 11, being two checks dated February 20th, 1938, one payable to the Over Nite Freight Service in the sum of two hundred and seventy-five dollars and signed by N. E. Rosenblum Truck Lines, and payable to Over Nite Freight Service; and check number 115 dated February 20th, 1938, payable to William Shandolov, for seventy-five dollars, signed by N. E. Rosenblum Truck Lines. And Exhibit number 11, being

bill of sale dated February 28th, 1938, made out from 281 William Shandolov doing business as Over Nite Freight

Service, sold to Truman E. Baulos and N. E. Rosenblum doing business as Rosenblum Truck Lines, miscellaneous office fixtures and furniture in St. Louis and Chicago, and the garage equipment located at 301 Geyer Avenue; signed Over Nite Freight Service, by William Shandolov. I desire to offer Applicant's Exhibit 12, being a letter dated March 15, 1938, signed by William Shandolov doing business as Over Nite Freight Service addressed to Lee Andrews, relating to checks made payable to the Over Nite Freight Service. I desire to offer in evidence Applicant's Exhibit number 13, consisting of five insurance policies issued to William Shandolov doing business as Over Nite Freight Service.

MR. LATOURETTE. Of course, these are only the basis of the policies.

MR. HOPEWELL. I offer in evidence Applicant's Exhibit 14, being a letter dated March 5, 1937, signed by T. E. Baulos, William Shandolov, and N. E. Rosenblum, addressed to "Whom it may concern," reciting that at that time and at no other time had there ever been a partnership between the three persons mentioned."

MR. LATOURETTE. And also saying that they are signing to cancel the agreement, because they found out it would be against the Interstate Commerce Act to be partners in the trucking and terminal business; isn't that right?

MR. HOPEWELL. I desire to offer Applicant's Exhibit 282 15, being a receipt issued by the Comptroller of the City of St. Louis to William Shandolov as the Over Nite Freight Service, covering water service at 301-7 Geyer Avenue, St. Louis, Missouri, for the period beginning with March 1, 1937.

I desire to offer Applicant's Exhibit 16, being a credit memorandum issued by the Cobb-Walsh Insurance Agency, St. Louis, to William Shandolov, doing business as Over Nite Freight Service, in the sum of one hundred dollars, under date of April 7th, 1937. I now desire to offer Applicant's Exhibit 17, being a group of three notes signed by Over Night Freight Service, by William Shandolov, each dated March 15, 1937, and each in the sum of five hundred dollars, and all payable to the Mutual Bank and Trust Company, St. Louis, Missouri. I desire to offer Applicant's Exhibit No. 18, being lease dated March 4, 1937, between G. H. Hammond Company, lessor, and William Shandolov, doing business as Over Nite Freight Service, as lessee, covering office space and terminal space in Chicago, Illinois. I desire to offer in evidence as Applicant's Exhibit number 19, being an order coupon signed by William Shandolov and addressed to the Editor of the Power Wagon, Chicago, Illinois, under date of April 17th, 1938. I desire to offer as Applicant's Exhibit 20, a copy of the employers return under title 8 of the Social Security Act for the month of October 1937, made out to the Over Nite Freight Service, 1409 South 8th Street, St. Louis and signed by William Shandolov as the owner.

Exam. ANGLE. Is there any objection to receiving these exhibits?

Mr. LATOURETTE. I see none, except that I understand counsel will furnish me with copies of exhibits 7 and 8, which are the auditor reports.

Mr. HOPEWELL. We will furnish you with copies of the complete report.

Exam. ANGLE. With that understanding, then, exhibits 7 to 20 will be received.

(Applicant's Exhibits 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, and 20, Witness Shandolov received in evidence.)

Exam. ANGLE. Take a short recess.

(A short recess was taken.)

Redirect examination by Mr. LATOURETTE:

Q. Now Mr. Shandolov, you have seen applicant's exhibits 7 and 8, being the report made by Adolph Kahn, a public accountant, have you not?

A. Yes, sir.

Q. Particular reference was made to the first three pages of the report, which contain reference to assets and liabilities under the heading, "Over Nite Freight Service"; and I will ask you whether or not that refers to the joint operations of Rosenblum, Baulcs, and Shandolov?

A. It does.

284 Q. Now, in applicant's Exhibit numero 8 reference is made to cash in bank and on hand, on page number 2 of that exhibit; that cash is shown as being in three banks, the Mutual Bank and Trust Company, Jefferson-Cravois Bank, and Manufacturers Bank and Trust Company; now, was that money moneys resulted from the joint operations of Shandolov, Baulos, and Rosenblum?

A. Yes, sir.

Q. Reference is made to furniture and fixtures shown in page number 3 of Applicant's Exhibit 8; did that refer to the furniture and fixtures owned by the three parties?

A. That is right.

Q. In other words, the financial statement, as I understand it, then, is that reflected in the joint operations of the three parties, Willia, Shandolov, Truman E. Baulos, and N. E. Rosenblum?

A. Yes; though the statement is given in my name.

Q. In Applicant's Exhibit number 8, and also Applicant's Exhibit number 7, there is detailed, particularly on Applicant's Exhibit number 8, shown in exhibit C, contained in that exhibit, under the heading "William Shandolov, doing business as Over Nite Freight Service, St. Louis, Missouri"; and immediately under that analysis of N. E. Rosenblum Truck No. 1, October 1, 1936, to October 31, 1936.

A. Yes, sir.

285 Q. Now, does that set forth a system of debits and credits that were made back and forth as between Rosenblum and the operation that we know and you have described as Over Nite Freight Service, composing the three parties?

A. Each truck had a separate page, a debit and credit page; and that is what the analysis is for that particular truck, for that particular move, the debit on that truck and the credit on that truck.

Q. So that these statements reflect, then, the joint operations of trucks that were in the combination known as Over Nite Freight Service?

A. That is right.

Q. Although there were separate trucks allocated to Rosenblum, separate trucks to Baulos, and separate truck to Shandalov?

A. Although that report is made to and mentioned my name only, Williams Shandalov doing business as Over Nite Freight Service.

Q. But the report in toto reflects the operations of the three parties, Baulos, Shandolov, and Rosenblum?

A. That is correct.

Q. Now, in the contract headed partnership agreement, which is in the official files of the Commission, it is stated as follows: "That even though, for the purpose of the operation of said business, the company may be operated in the name of each respective partner individually, for all outside intention
286 and purposes that, nevertheless, each partner to this agreement has an equal one-third interest in all of such companies." That is stated, isn't it, in the contract?

A. That's right.

Q. Now, you have been cross-examined with respect to Social Security reports which were made, with reference to water license receipts, and other matters where your name appears individually as William Shandolov doing business as Over Nite Freight Service; was that done pursuant to the agreement you had with Rosenblum and Baulos, that you would, insofar as the general public was concerned, deal with them as individuals, although the combined operations were considered a partnership operations?

A. That is specifically mentioned in that contract.

Q. And is that the reason why you dealt individually in those individual cases?

A. That is correct.

Q. Now, the furniture which is covered by applicant's Exhibit No. 11, being a bill of sale; I understand you to say that was all purchased by the combined operations?

A. From the money of the combined deposits and operations.

Q. State what the payment of \$275.00 to you represented?

A. It was not paid to me; it was paid to the Over Nite Freight Service. It was deposited immediately in the bank, and it was paid some debts. I personally never got a dime of that money.

287 Q. Paid debts incurred jointly by Rosenblum, Baulos, and Shandolov?

A. That is correct.

Q. Do you know whether or not prior to August 1, 1937, and August 1, 1938, the debts which are shown on policies in applicant's Exhibit 13, there were policies issued which contained the names of assureds, in addition to yours, covering the joint operations?

A. All three names were mentioned in that policy.

Q. All three names were mentioned in the prior policy?

A. The policy was given in three names to cover three operations, to cover Baulos' operations, Rosenblum's operations, and Over Nite Freight Service.

Q. Was there any description in there as doing business as Over Nite Freight Service?

A. I won't be able to answer that correct.

Q. You were shown a lease identified as applicant's Exhibit 18, covering the Chicago Terminal; was there a prior lease in effect covering this same property?

A. Yes; from February 1, 1936, until February 1, 1937.

Q. And in whose name was that lease taken?

A. N. E. Rosenblum.

Q. And at that time were you operating the combined properties out of the Chicago Terminal just as you did under the lease identified as Applicant's Exhibit No. 718?

288 A. Yes, sir.

Q. Did you ever sign your name to the paper marked Applicant's Exhibit No. 14, at the time it had contained in it the statement beginning with "To Whom it may concern," dated March 5, 1937?

A. Never.

Q. Can you explain how your name happens to be on Exhibit No. 14?

A. Yes; I can. In the last part of February, or the earliest part of March 1938, while I was going out of business one of my employees asked me for a reference letter. I asked that bookkeeper, who at that time already didn't work for me any more, he already worked for Rosenblum and Baulos, to be kind enough to write that man a reference letter. The bookkeeper was very busy, and he said, "I will tell you what, Shandalov; if you will sign your name on a letterhead, and I will fill it out later to that man. Instead of reference, he developed this letter.

Q. Was that in 1938, or 1937?

A. In 1938, I had my name signed on the blank letterhead.

Q. Did you ever sign a paper in 1937 which contained the writing beginning with, "To whom it may concern?"

A. Positively no.

Q. Was it at or about almost a year after the purported date of applicant's Exhibit 14 that you and Mr. Rosenblum
289 and Mr. Baulos went to Rabbi Epstein for the purpose of agreeing before the Rabbi that you would dissolve this partnership.

A. Yes, sir.

Q. Did you ever hear any discussion on the part of Mr. Rosenblum and Baulos with respect to then being afraid of the Commission questioning their operation because of it being tied in with a common carrier operation conducted by yourself?

Mr. HOPEWELL. Object to that as being leading and suggestive, your Honor.

Mr. LATOURETTE. Well, he knows whether he heard any conversation. I am not asking him what it is.

Exam. ANGLE. This is, as I have said before, a fact finding proceeding; and, of course, technical objections just tend to delay the orderly course of proceeding. The Commission is interested in getting all the facts before them. For that reason I think it is proper for him to answer the question.

Mr. HOPEWELL. I take it, it is proper for him to state, what, if anything was said?

Mr. LATOURETTE. I am asking whether or not there was a talk there—

Mr. HOPEWELL. In that question he is suggesting the very answer.

Exam. ANGLE. Can you frame the question another way?

By Mr. LATOURETTE:

Q. Was there ever any discussion that you heard on the 290 the part of Mr. Rosenblum and Mr. Baulos respecting the legality of the operation by themselves as contract carriers in combination with you are common carrier?

A. Yes; we had quite a few discussions to that matter.

Q. And did Mr. Rosenblum or Mr. Baulos ever express, at that time, any fear that the Commission might question that sort of an operation?

A. Yes, sir.

Q. Can you state approximately when such statements were made by Mr. Rosenblum and Mr. Baulos?

A. I would not be able to recall that date.

Q. Was it subsequent to the hearing before this Commission on the three applications, or was it after those hearings on the three applications?

A. I believe it would be around that time.

Exam. ENGLE. Was that before or after?

A. I don't know if it is after or before; but around that time. And that hearing was held in December, some time in December.

By Mr. LATOURETTE:

Q. Of 1936?

A. Of 1936.

Q. Now, you were asked some questions with respect to the testimony by Mr. Connor in the Shandolov hearing, were you not?

A. Yes, sir.

Q. Do you recall that Mr. Miller, representing the Rail

291 Carriers at the Shandalov hearing, on page 147 of the transcript asked Mr. Connor this question: "In this arrangement for the division of expenses between Over Nite Freight Service and N. E. Rosenblum Truck Lines, is it evidenced by a written contract, evidence by writing signed by both parties?" Do you or do you not recall that question by him?

A. I do not recall that.

Q. Do you recall whether or not Mr. Connor made the answer "Not to my knowledge"?

A. I don't recall that.

Q. Do you recall that Mr. Highberger, the Honorable John C. Highberger, representing the Missouri Public Service Commission, on page 149 of the transcript in the Shandalov case, asked this question of Mr. Connor: "Do you know of any contract wherein it is agreed that Over Nite Freight Service is to advance moneys, as represented by this check, for Rosenblum, \$17.50, as you have explained?" "I don't know of any written contract to that effect, except that I might say if you have reference as to whether or not Over Nite Freight Service has security to protect itself against such matters, I might say that it is at all times enough of a reserve held to protect against such a contingency." Do you or don't you recall such statements?

A. As I said before, I don't remember if I were at that time in the hearing.

292 Q. Did Mr. Connor at any time know of the existence of this written contract?

No; he was not supposed to know that.

Q. It was kept a secret as between the three parties?

A. Absolutely.

Q. And as to the general public it was to be understood by them that you were individuals although you operated under the contract which provided for a split of the profits and the losses?

A. Yes, sir.

Q. You were asked on cross-examination with reference to certain conferences had in the office of Mr. Aronoff or Mr. Hope-well, or both, with respect to this arrangement you had with Mr. Baulos and Mr. Rosenblum; did those conferences take place after March 1, 1937, the date of the partnership agreement in evidence here?

A. Yes, sir.

Q. And were you at that time discussing the question of dissolving the partnership?

A. Yes, sir.

Q. And that was after the purported statement marked Applicant's Exhibit No. 14?

A. Exhibit No. 14, I didn't see until some time late in August 1938, the first time I ever saw that exhibit.

Q. Now, this conference in Mr. Hopewell's office, or Mr. Aronoff's office, with reference to dissolving the partnership took place after March 5, 1937, did it not?

A. Yes, sir.

Q. Was the statement that is marked Applicant's Exhibit 14 mailed out to the public, or was it retained in the files, do you know, after you saw it, after you first learned of it?

A. Not to my knowledge, it was not disclosed to any one.

Q. In fact, you yourself didn't know of its existence until 1938?

A. Some time in August 1938.

Q. Up to the time you say you mailed letters to creditors calling their attention to the existing partnership, was there any particular financial difficulty with reference to payment of bills, or had they been paid quite regularly.

A. There were difficulties in paying bills.

Q. There were difficulties?

A. Yes.

Q. But up to that time the bills had been paid out of this general bank account which was created through the joint operations of these three parties?

A. Yes, sir.

Q. I believe you mentioned the fact that Mr. Baulos was in Chicago terminal; in that terminal did he handle the joint business of the three parties?

A. Yes, sir.

Q. Who are composing this partnership?

A. He was the manager of the Chicago office for all three parties.

Q. Counsel raised the question as to whether or not I had ever seen or had in my possession the original partnership agreement which is attached to the petition for the reopening of this case: will you state for the record what sort of a copy of the contract you gave me, and the origin of that copy?

A. I gave you a photostatic copy of the original contract.

Q. Did you have that copy made before it was left with the Rabbi?

A. Yes, sir; I did.

Q. And you brought that photostatic copy to my office?

A. Yes, sir; I did.

Q. And is it true at the time you discussed the dissolving of the partnership with the Rabbi, the understanding was that the original contract was to be left with him?

A. That is right.

Q. You testified that in 1936, the lease for the Chicago Terminal was in Rosenblum's name, and then in 1937 it was in your name; was is the fact with reference to the St. Louis terminal?

A. The St. Louis terminal was in my name from the first day on.

Q. Do you recognize the signatures of Mr. Truman E. Baulos and Mr. N. E. Rosenblum on the partnership agreement
295 which is included with the petition for further hearing?

A. Yes, I do.

Q. And your signature also is on there?

A. My signature also appears.

Q. Now, is it true that since you had the lease of the St. Louis terminal the application for water service would have to be made in your name?

A. Yes, sir.

Q. And therefore the bills came in your individual name?

A. Yes, sir.

Q. Although, as I understand your testimony, the bill for water service was paid out of the joint operations of the three companies?

A. That is right.

Q. And the rent on the terminals was paid the same way?

A. Yes, sir.

Q. That would be true with reference to light services, and any other services incidental to the operation of the property; is that right?

A. Yes, sir.

Q. These notes that are listed as applicant's Exhibit 17 are notes, I presume, on trucks in the name of Shandalov, which were used in the combined operation; is that right?

A. If you please, let me look at that note again.

Q. Yes.

296 A. Those notes were not given for trucks; they were given for accounts receivable. The collateral was accounts receivable of Rosenblum, Baulos, and Shandalov.

Q. So that you went to the bank and you pledged the account receivables of Rosenblum, Baulos, and Shandalov; and the note of Shandalov was given as security together with the accounts?

A. My signature, rather, was given.

Q. Yes; so that because the bank account of the combined operations was in the name of the Over Nite Freight Service?

A. Of the Over Nite Freight Service.

Q. So that likewise was not an individual obligation; that is the lending or borrowing of that money was not the incurring of an individual obligation—it was incurred by you in behalf of the combined operation?

Mr. HOPEWELL. Object; that is calling for the conclusion of the witness, and invading the province of this Commission. It is for the Commission to determine.

By Mr. LATOURETTE:

Q. Well, I believe you said the money was borrowed, and as collateral accounts receivable of the three operations were pledged?

A. That's right.

Q. Did the proceeds from the loan go to pay obligations of the combined operations?

A. The proceeds of the loan was for the further operation of the business.

Q. Of the three companies?

A. Of the three companies.

Q. Operating as a partnership?

A. That is right.

Exam. ANGLE. Does that satisfy your objection, the way he put that?

Mr. HOPEWELL. Yes.

Mr. LATOURETTE. I think that is all.

Recross examination by Mr. HOPEWELL:

Q. Mr. Shandalov, you have those three notes there before you, have you not?

A. Yes, sir.

Q. Is there anything in there at all where the name N. E. Rosenblum or Truman E. Baulos is mentioned?

A. I can't see any.

Q. Does it say anything at all about Rosenblum's accounts receivable and Baulos' accounts receivable?

A. I can't see any.

Q. You needed money to operate their services?

A. Needed all the time.

Q. You needed it from the time you started until you closed?

A. I usually need it.

Q. You were in hot water from the time you started until the time you closed?

A. Maybe it was scalding water; I don't know.

298 Q. Did I understand you a while ago, Mr. Shandalov, to tell this Examiner that you didn't want your own bookkeeper to know anything about this partnership?

A. No.

Q. Isn't that what you said?

A. Yes.

Q. That you had kept from your own bookkeeper the knowledge that you were operating as a partnership?

A. Yes.

Q. And you want the Commissioner or the Examiner to believe there that you did not confide in your own bookkeeper as to the true relations?

A. Because otherwise the bookkeeper wouldn't work, knowing it was a violation.

Q. Knowing what was a violation, of what?

A. Well, whatever you are talking about.

Q. I am not talking about—you said violations, didn't you?

A. Yes.

Q. Why wouldn't you tell your bookkeeper that you were partners somewhere along the line?

A. Because it was supposed to be kept between us three.

Q. In other words, it was just a secret between the bosom of you three men, that you were partners?

A. That's right.

Q. From whom were you concealing the fact that you were general—that you were partners?

A. From the general public.

Q. Including the Interstate Commerce Commission, and The Examiners of the Interstate Commerce Commission?

A. I didn't say that.

Q. That is what I am trying to bring out; you didn't want the public to know that the three of you were partners?

A. No.

Q. You didn't want the Examiner of the Interstate Commerce Commission to know that you were partners?

A. I didn't say that.

Q. Why didn't you want the general public to know you were partners—is there any law against a partnership, so far as the general public is concerned?

A. I don't know; but that was the agreement between the three of us.

Q. You were not going to let any creditor know you were partners?

A. That's right.

Q. You were not going to let any Examiner of the Interstate Commerce Commission know you were partners?

A. No; we were never talking about that.

Q. You never talked about—

A. We never mentioned that at all.

Q. That never entered into it?

300 A. No.

Q. What was it that would make—that you would want to keep it secret as against your own bookkeeper, or even the public, again?

A. To think of it now, I don't really know why I wanted to keep it a secret.

Q. I am trying to find out, to discover just why there was such secrecy about the partnership, if there was nothing illegal about it?

Mr. LATOURETTE. I submit, the applicant's own exhibit which purports to be a dissolution of this partnership—

Mr. HOPEWELL. We will get to that a little bit later.

Mr. LATOURETTE. I am making an objection right now.

Mr. HOPEWELL. Just make your objection and let the Commissioner ruler on it.

Mr. LATOURETTE. I submit the question is answered by applicant's own exhibit, in which they themselves say they found out it would be against the Interstate Commerce Act for them to be partners.

Mr. HOPEWELL. That is a long time after this alleged partnership went into existence.

Mr. LATOURETTE. That is dated four days after the alleged partnership contract.

Mr. HOPEWELL. As I understand, this secrecy began with February 1936, did it not?

301 The WITNESS. You will have to ask that question of the applicant; I don't know what to answer you on that question right now.

Q. You are one of the three that was keeping it a secret from the public; are you not?

A. We wanted to keep it between ourselves.

Q. You were one of the three people that kept it from the public?

A. Right.

Q. And you are one of the three persons that kept it from your bookkeeper?

A. Yes; I was one.

Q. And you are one of the three persons that kept it from Adolph Kahn, the certified public accountant; is that correct?

A. That I don't know, if I kept the secret from him or not.

Q. Well, you would know whether you told him; he made up these reports which you have testified were correct?

A. Yes.

Q. Based on the information in your books?

A. Yes.

Q. You would not want to leave the Examiner to believe you would violate the law making up reports and files?

A. No.

Q. It would subject him to cancellation of his license?

302 A. Yes.

Q. What brought about the discussion of the legality or the illegality of that alleged contract around December 1936—what prompted you three men to talk about that?

A. Will you repeat that question, please?

Q. What prompted you and Rosenblum and Baulos, around December 1936, to talk about this secret contract that you thought being illegal or unlawful; what brought up the conversation?

A. Who said it came up conversation about it?

Q. I say, what brought it about?

A. I mean if I say we were talking about it in December 1936?

Q. That is what you testified in response to Mr. LaTourette; were you wrong when you said you discussed the legality of it?

A. Well; due to the fact when we came to a hearing that time—the hearing was held on December 4th; Rosenblum's hearing was held December 5th, and Baulos' hearing was held on December 5th; the Commission, or rather the protestants, were pressing on that question.

Q. In other words, before you had a hearing in December 1936, you and Mr. Rosenblum and Mr. Baulos came together and talked about whether or not this secret partnership might be illegal or legal, so far as your applications were concerned; is that true?

303 A. At that time we didn't know anything what is the ruling of the Commission, whether it is legal or illegal, or anything.

Q. Mr. Shandalov, did you understand my question?

A. Yes, I did.

Q. Let me ask you again, before you had a hearing on your application in December 1936, and before N. E. Rosenblum had a hearing on his application in December 1936, and before Truman E. Baulos had a hearing on his application in December 1936; did the three of you get together and discuss the legality or the illegality of this alleged partnership arrangement?

A. Not until about the hearing time.

Q. I don't care whether it was about at the hearing; I asked you if it was before you had a hearing?

A. I still answer the same thing; I said around the hearing time.

Q. Was it before or after?

A. I don't remember.

Q. What would be your best recollection?

A. My recollection wouldn't be any good now.

Q. You wouldn't want this Examiner to believe you men had gotten together and concocted some kind of story, and that record was not the truth, on your hearing in December 1936?

A. It is too far back to remember that.

Q. Was the testimony in support of your application in 1936 true; the records of your testimony and that of Connor,
304 and the other men that testified in support of the application?

A. My testimony before the Commission?

Q. Yes, in December, 1936; was that true?

A. Yes, sir.

Q. And likewise the testimony of your witness, Connor; so far as you know, his testimony was true; wasn't it?

A. As far as I know, it was true.

Q. You don't want this Examiner to get the idea that you and Mr. Rosenblum and Mr. Baulos got together and sort of planned how the testimony was to be given, to support your applications, with you having in mind secret arrangement of some sort?

A. Oh, yes; we had discussed that; but not that we knew that the protestants were going to take our application as far as having the right; so we discussed that fact.

Q. Yes. You discussed the fact that the three of you had the right to have either a permit or certificate, so far as being a bona fide operation of this kind?

A. No; we were discussing in general under the grandfather right, whether it is a permit or a certificate.

Q. But you do not want this Examiner to understand now, from your testimony that you had built up your case for that hearing in December, with the thought in mind that you were actually operating—that you were actually violating some
305 law at that time, do you, with reference to your operations?

A. No.

Q. Now, whose names appeared on all the trucks of Rosenblum, in his operations, during all the period that we have been discussing?

A. Regardless of whose name appeared; I still answer that question that that contract was drawn that each one should have his name on the trucks.

Q. Did you understand my question?

A. Yes, I did.

Q. Will you answer it; whose name was on the trucks he operated?

A. Rosenblum's.

Q. N. E. Rosenblum was on each one of them, was it not?

A. Right.

Q. And the state license that appeared on each one of the equipment were issued to him only; were they not?

A. What state?

Q. Well, Illinois and Missouri; and whatever state he had a license in?

A. No; there were some state licenses on Rosenblum's truck were gotten or paid for by the Over Nite Freight Service; and the application was made out in the name of the Over Nite Freight Service.

Q. You mean the license plates on some of Mr. Rosenblum's equipment had been issued to the Over Nite Freight Service?

306 A. Yes.

Q. Who hired the drivers on Rosenblum's equipment?

A. Rosenblum.

Q. Did you ever hire anybody for any of Rosenblum's equipment?

A. No, I did not.

Q. Did you ever fire anybody from his equipment?

A. No, I did not.

Q. Did you ever direct any of his drivers where to go, and what to do, and how to do it?

A. If it has any reference to the general operation, I did; but I didn't tell any of his drivers about his tires; about his gas and buying; about repair on the trucks.

Q. When gasoline was bought for the operation of Rosenblum's trucks, it was charged to his individual account; was it not?

A. It was charged to each individual contract, which is covered in the writing.

Q. If Rosenblum needed tires on his truck, and the Over Nite issued a check for them, that was immediately charged to his individual account; was it not?

A. Anything purchased for the use of his trucks, as far as the repairs, tires, gasoline, drivers, were immediately debited to that individual carrier, whether it was Rosenblum or whether it was Baulos, or whether it was Shandalov.

Q. That's right—however, any other instance, like fines, and so on, that was paid by Over Nite Freight Service.

307 A. Yes.

Q. Any insurance that might have been paid for Mr. Rosenblum that was charged to his account, also?

A. What?

Q. Any expenses charged to his account—

A. With reference to drivers only.

Q. Whenever Over Nite paid an advance to the drivers, you say that was immediately charged to the account?

A. If it was made an advance to one of his drivers on one of his trucks, it was immediately charged to Rosenblum.

Q. These exhibits which Mr. LaTourette has been exhibiting to you, the account has made an analysis of the trucks of Mr. Rosenblum and Mr. Baulos, in which he sets up—

A. And myself, yes.

Q. By the dates each item that was charged to the driver?

A. That's right.

Q. Others were advanced ten dollars, and charged to his individual account?

A. Correct.

Q. That was not charged to general expense of Over Nite Freight Service?

A. No.

Q. Here is Zornb, that was one of Rosenblum's drivers?

A. Right.

Q. That appears February 20th, 1936; you advanced him ten dollars?

308 A. That was charged immediately to Rosenblum.

Q. In other words, it was not charged in to the general expense of the Over Nite Freight Service?

A. No.

Q. That is true with each truck?

A. Yes.

Q. Rosenblum and Baulos?

A. And to my individual trucks.

Q. And you had other individual trucks, besides Rosenblum and Baulos?

A. That's right.

Q. Your accountant makes reports as to operation of those trucks?

A. Yes; it shows here a fellow by the name of Cutrip was credited five dollars; here is one that had a debit of eighty-seven dollars.

Q. These were operating out of your terminal?

A. No; they were not operating out of my terminal; they were hired for a single trip. That is different, operating out of my terminal and hired for a single trip.

Q. Any expense, as you call them, for extra drivers was charged on the books in the same manner as the expense charged to Baulos and Rosenblum; is that correct?

A. No; it is not. This picture presupposes here that while this man hired himself out for the round trip, sixty dollars, he did get an advance of fifteen, and he still has a credit

309 coming of forty-five dollars.

Q. In other words, the accountant in making up this entire operation report here had to give you the information as to all the operators coming into and out of your terminals; isn't that correct; so that you could arrive at what your profit had been, or loss, as the case might have been?

A. Yes; to give me the operators' ledger.

Q. That's right; that is taken off the operators' ledger, the same as Baulos and Rosenblum; isn't that correct?

A. That is correct; and when it says Rosenblum, a credit, Shandalov a debit, and Baulos a debit.

Q. In other words, in your books there are certain ledgers showing operators' accounts?

A. Otherwise the books would not be complete.

Q. In your original book you keep ledger sheets showing operators' accounts?

A. Yes, sir.

Q. And Baulos is in there, or Jones, or yourself, or any one who might operate a truck?

A. That's right.

Q. You have noticed in the making up of this report the entire investment account of Over Nite is credited to you?

A. Yes.

Q. Showing you have an investment of \$3,445.63?

A. Yes.

Q. You don't see anywhere on here where it appears
310 Baulos and Rosenblum have any investment?

A. No.

Q. It does not appear anywhere; does it?

A. It does not appear.

Q. Now, Mr. Shandalov, you say on or around about February 28, 1938, you had an employee that wanted a letter of recommendation?

A. Yes, sir.

Q. Was there anything to prevent Rosenblum or Baulos from giving that driver a letter of recommendation?

A. You talk a little bit slower so I will grasp what you are talking about.

Q. Was there anything preventing N. E. Rosenblum or Truman E. Baulos from giving this driver a letter of recommendation?

A. No.

Q. They could have issued a letter of recommendation to him the same as you could?

A. Not to one of my drivers.

Q. He was your driver?

A. One of my drivers.

Q. He was not a driver of the Over Nite Freight Service, this partnership?

A. He was one of the drivers of one of my trucks.

Q. Then he worked for you individually?

A. Yes.

Q. He did not work for the Over Nite Freight Service?

311 A. Well, as I explained before, the trucks were each controlled by each one individually, not by the company, not by the three companies, but by each individually. These trucks were operated and controlled that way.

Q. When you wanted Lee Andrews to write a letter to himself on March 15th whereby you instructed him not to turn over any more checks to anyone but yourself, he had plenty of time to write that letter without your signing it in blank; didn't he—the letter which we have exhibited here, dated March 15th, 1938, which you stated to the Examiner you dictated to Mr. Lee Andrews, your bookkeeper, you didn't have to sign that letter in blank?

A. I had to catch him somewhere in the garage at ten o'clock at night; he was busy during the day.

Q. Did he write this letter dated March 15th, 1938, in the garage?

A. Yes; it was typed there and immediately signed by me and given to him.

Q. When is the first time you claim to have seen that letter, Exhibit No. 14, which is dated March 5, 1937?

A. Sometime in August 1938.

Q. Do you recall where it was you first saw it?

A. Yes, I do.

Q. Where?

A. In court.

Q. Whose court?

312 A. Judge Griffin's Court.

Q. That was in June, wasn't it, of 1938—June 6th, 1938?

A. Well, you seem to know better the date; I know it was sometime in the summer.

Q. That was at a proceeding in the State of Missouri against you; isn't that correct?

A. That's right.

Q. Before the—

Mr. LA TOURETTE. I object to counsel talking about another proceeding in the Criminal Court. If he wants to test the witness' credibility, he does not need to read all the charge and everything else that is involved in that suit.

Mr. HOPEWELL. I think that is a proper foundation on it.

Exam. ANGLE. Of course, it is all right to ask him a question; but I don't think it is at all necessary to bring out this was a hearing in the Criminal Court and the like.

Mr. HOPEWELL. Withdraw that part of the question, about the particular court——

By Mr. HOPEWELL:

Q. You did testify in the hearing before the Honorable James W. Griffin, in St. Louis?

A. I refuse to answer any questions coming in from that book, if I have my constitutional rights; they have nothing to do with the dual operations we are discussing now.

313 **Mr. LATOURETTE.** I will instruct the witness to stand on his constitutional rights, on the grounds he might incriminate himself.

Exam. ANGLE. What do you propose to prove by this, Mr. Counsel?

Mr. HOPEWELL. That this same exhibit, No. 14, which the Court will observe was identified as Exhibit 6 or 7 in the State Court, was tendered to this witness and the question asked him if he signed it; and his explanation as to his signature on it; his testimony in that respect in the other court is at variance with his testimony here.

Exam. ANGLE. Why not ask him the question as a direct question without referring to the record. Ask him the question if he testified at such and such a hearing.

By Mr. HOPEWELL:

Q. Mr. Shandalov, I will ask you whether you gave testimony in a hearing before the Honorable James W. Griffin——

The WITNESS. I refuse to answer that question.

Q. About June 6th, 1938?

A. I refuse to answer that question.

Q. I will ask you whether Exhibit No. 14, which has been offered and identified here today, was on June 6th, 1938, shown to you, and when you gave an answer as to whether or not you had signed it?

314 **A.** I still answer the same way, I refuse to answer anything that is concerned with that particular book, whatever it is.

Q. You remember our exhibit No. 14 here today, which is the letter dated March 15th, 1937, cancelling this other document?

A. If I remember that exhibit?

Q. No. 14?

A. If I saw it? I did.

Q. Do you remember seeing that exhibit on June 6th, 1938?

A. I don't remember the date, but I saw it some time later this 1938.

Q. And that was when you were questioned in the matter, that you first saw it?

A. I will still go back and refuse to answer that.

Q. You were represented in that proceeding by Mr. Edward K. Schwartz, were you not, an attorney here in the city?

A. I refuse to answer that.

Q. I will ask you whether or not, Mr. Shandalov, you made any explanation at the hearing on June 6th, 1938, as to the document which has now been identified as applicant's Exhibit number 14?

A. I will not answer that.

Q. By the way, I observe in one of these reports that Mr. Kahn made up that he states or sets up the value of the furniture and fixtures at \$270.00; was that figured that you and Mr. Baulos and Mr. Rosenblum used in arriving at the value of it, when it was sold to those two men in February, 1938?

315 A. We arrived at that figure as one-third.

Q. Was that the only piece of blank paper that you ever signed in connection with any of the operations of the Over Nite Freight Service?

A. Positively.

Q. At no other time did you ever put your signature on a blank piece of paper and hand it to the bookkeeper and tell him to write something on it?

A. Oh, many times. I even trusted my bookkeeper to leave signed blank checks, so I certainly could trust him signing a letter.

Q. Maybe you didn't understand; the only paper that you now claim you signed in blank—

A. I signed several more.

Q. Were the other papers ever filled out with something that should not be on them?

A. As long as no other funny papers came in, I feel they were signed the right way.

Q. You want the Examiner to understand that all the other papers you signed in blank were filled out in accordance with your instructions?

A. It all depends.

Q. You understood the question, Mr. Shandalov?

A. I understood it, Mr. Hopewell.

316 Q. Mr. Shandalov, I am going to read a question here and ask you if you recall it having been propounded to you—the question and answer, on June 6th, 1938, by Mr.

Fitzgibbons: "Q. Will you read that exhibit, Mr. Shandalov?" "Answer: I will read the exhibit all right." Do you remember that question and answer?

A. I refuse to answer.

Q. "Q. Take your time, so the Court may hear, and Mr. Schwartz. Will you read it?" "Answer: To Whom It May Concern: This is to certify that we are not in partnership and have never been as the Over Nite Freight Service, although we all signed a paper about March 1st, 1937, saying we were. We are signing this to cancel that agreement because we have found out it would be against the Interstate Commerce Act for us to be partners in the trucking and terminal business, and we are cancelling the partnership agreement for the protection of all three of us so no one can claim we are partners as the Over Nite Freight Service under the agreement or in any kind of business as partners." "Question: Now, what signatures are on there?" "Answer: Truman E. Baulos, William Shandalov, and N. E. Rosenblum." Do you remember those questions and answers?

A. I still stand on my constitutional rights, not to answer.

Q. "Question: It looks like your signature?" "Answer: Yes, sir." "Question: But you are not sure?" "Answer: No, sir."

The WITNESS. Mr. Commissioner, I am not represented
317 by any attorney.

Exam. ANGLE. What are you doing, making an offer of proof on that?

Mr. HOPEWELL. I want to question him, whether he recalls the questions and answers.

Exam. ANGLE. You can give him the answers, as you see fit. I can't make you answer.

The WITNESS. But have I a right to object to all these questions, because they have nothing to do with the hearing as going now. I am not represented by counsel.

Exam. ANGLE. It has to do with this agreement that is in dispute and you have testified to one thing here; and, of course, apparently for what it is worth, you testified apparently some place else to something else. Answer as you see fit.

The WITNESS. I would tell differently now than I did before—then the attorney could have it in the exhibit to prove to the opposite. It doesn't say anything to the contrary, what I am saying right now.

Exam. ANGLE. He has asked you a question and you have answered according to you—I can't advise you how to answer.

Mr. LATOURETTE. I have not heard anything up to this point that alters the testimony of the witness on re-direct, as to applicant's exhibit No. 14. He says that he didn't know if he signed it, according to the statement of counsel.

318 Mr. HOPEWELL. I have not quite finished—

By Mr. HOPEWELL:

Q. "Do you remember signing that paper." "Answer: No, sir."
 "Mr. Fitzgibbon: That is all." "Mr. Schwartz: No questions."
 Do you recall that proceeding, or do you refuse to answer?

The WITNESS. I refuse to answer.

Q. On June 6th, 1938, when that document was exhibited to you, did you make the same explanation in your testimony there that you have given today, as to how that document originated and how your signature came on it?

Mr. LATOURETTE. I object to that; it is not shown that he was asked to make any explanation, and not having been asked he, of course, could not volunteer one.

Exam. ANGLE. I think the objection will be sustained.

Mr. HOPEWELL. I think that is all.

Exam. ANGLE. Are you through with this witness?

Mr. Hopewell Yes.

By Exam. ANGLE:

Q. On June 1, 1935, or July 1, 1935, were you operating under an oral arrangement, partnership, with N. E. Rosenblum and T. E. Baulos, on or about June 1 or July 1, 1935?

The WITNESS. No.

Q. You were not?

A. No.

Q. What was the purpose back of entering into this
 319 partnership—was that to get three different certificates or permits, and then after you got them combine them together into one partnership; was that the idea?

A. No; the purpose of that was neither one of us had any money to go and start out to operate individually and to stand that much expense, as terminal facilities, bookkeeper telephone, office in Chicago, help in Chicago—not having anything.

Q. Did you operate, all three of you, in your separate capacities, one as common carrier and two as contract carriers, operate over the identical routes?

A. Yes, sir.

Q. Was there any deviation from that?

A. No.

Q. None whatsoever?

A. No.

Q. How did you bill these shipments operated as common carriers?

A. I billed common carrier, published common rates.

Q. Did they participate in these three routes, common and contract carriers; or did you handle them?

A. A certain amount of business was handled under common carrier rates, was handled by Over Nite Freight Service, billed by the Over Nite Freight Service and was collected under the legally published rates.

Q. Did N. E. Rosenblum or Truman E. Baulos, did they
320 issue a separate bill or freight bill for this merchandise you have turned over?

A. On their particular type of freight?

Q. Yes.

A. Yes; they did.

Q. Did you turn any freight over to them?

A. You mean to haul it?

Q. Yes; you as common carriers?

A. If I did not have enough equipment of my own I turned over to them to haul it for me.

Q. How was that billed when you turned it over to them; how was that freight billed?

A. It was still billed Over Nite Freight Service; he had a manifest. On the manifest was put on the top the name of the driver and the name of the truck.

Q. Well, did you know what contracts Truman E. Baulos or N. E. Rosenblum had at that time?

A. I knew them all.

Q. You knew them all?

A. I knew about them all. It was a certain type of business on contract carrier, but no common carrier can get it; especially packing house products. It has been the practice for years for the packing houses to give that business to contract carriers, and they did not interfere any way with my common carrier
321 business, because I could not get that anyway.

Q. Did N. E. Rosenblum or Truman E. Baulos each of them enter into the contract, do you know, with these packing houses under their own name, or under the name of Over Nite Freight Service?

A. Under their own name.

Q. What was the real purpose back of this partnership agreement—it is rather confusing; one moment you want to dissolve the partnership; and the next moment you want to enter into one?

A. Well, the purpose is economical purpose, first. Because it is almost the same expense to have three operations there as there would be one operation.

Q. You wanted the partnership to cover the common carrier operation and contract operation?

A. To have enough business, because one of us would not have enough business to pay all the expenses.

Q. In one single entity to conduct two different types of operation; is that right?

A. That is right.

Q. Did you have any agreement whereby if each of you receives a certificate or a permit, whichever the case might be, that you would dissolve the partnership after that was over with?

A. No; the only agreement we had is that one we show right now on file with the Commission; that is the only agreement we ever had.

Q. Suppose there was only a certificate allowed, and neither of the other two received a permit?

A. Then they would come in with me as a full partner in the certificate, and forget all about contract business, and devote their efforts and their trucks to develop common-carrier business.

Q. Did you enter into this contract so as to keep it secret, so that the Interstate Commerce Commission would not know about it—so that you could get a permit, whatever the case might be?

A. Well, that contract covers that, saying that if each one can operate in his individual name he is a third partner to the other business. In other words, if they would deny the Over Nite the common-carrier certificate, then I would move in with them and just operate as a contract carrier with them, sharing one third.

Q. But, if you got the certificates or permits you were going to operate a dual operation over the same routes?

A. Well, it didn't come to that.

Q. Did you ever have such an agreement as that, or any such understanding?

A. No.

Q. None at all?

A. No.

323 Exam. ANGLE. I have no further questions.

By Mr. LATOURETTE:

Q. You did say, however, that under the agreement if neither one or the other did receive any form of authority from the Interstate Commerce Commission that all three would be equal partners in the authority?

The WITNESS. That was covered in the contract.

Mr. LATOURETTE. That is all.

Exam. ANGLE. Are you all through with this witness?

Mr. LATOURETTE. Yes.

(Witness excused.)

Exam. ANGLE. We will take a recess at this time until 7:45 this evening.

(At 5:50 a recess was taken until 7:45 P. M.)

EVENING SESSION—7:45 O'CLOCK P. M.

N. E. ROSENBLUM was sworn and testified as follows:

Direct examination by Mr. HOPEWELL:

Q. Will you state your name, please?

A. N. E. Rosenblum.

Q. Where do you live, Mr. Rosenblum?

A. At 6242 South Wood.

Q. Is that in St. Louis?

A. Yes.

Q. What business are you engaged in?

A. The long-distance trucking business.

324 Q. How long have you been in the trucking business?

A. Since the latter part of 1933.

Q. Your operations, briefly, are between what points?

A. St. Louis and Waukegan; Chicago and Waukegan.

Q. Now, did you at any time operate out of a terminal conducted by William Shandalov, on South 8th Street?

A. Yes, sir.

Q. 1408 South 8th Street?

A. 1409, in fact.

Q. Do you remember when you first started in operating out of that address?

A. Well, I think it was around March 1936.

Q. Had you known Mr. Shandalov prior to that time?

A. Yes, sir.

Q. How long had you known him?

A. Around 1934, the early part of 1934.

Q. Will you relate to the Examiner the circumstances under which you began operating out of 1409 South 8th Street?

A. Well, I had been operating out of 1125 South Broadway, but there were no dock facilities there and Shandalov was opening up a terminal at 1409 South 8th Street; and there were docks facilities there, larger office space, and it was with the idea of economy of dock and office help that we went into the thing.

325 Q. At that time did you enter into any oral agreement with Mr. Shandalov whereby you and Truman E. Baulos, all three became partners?

A. No.

Q. Was anything said between you and Mr. Baulos and Mr. Shandalov around March 1936 as to becoming partners in the operation of the business?

A. None whatsoever at that time.

Q. Now, the lease on the premises at 1409 South 8th Street, did you have anything to do with the lease?

A. No; in fact, I didn't know until today that he had a lease. I thought it was on a monthly basis. That is how little I knew about that.

Q. You took no part in the negotiations for the rental of the premises?

A. No; except that I was called up and went to see if it was agreeable to go in there.

Q. Did you have any basis at 1409 South 8th Street?

A. Yes; we had a tonnage basis; the pro rata of the tonnage would hinge on the expenses of operating the terminal.

Q. Do I understand you to mean that the expenses from time to time would be pro rated according to the tonnage of each man operating in and out of that dock?

A. That's right.

Q. During that period of time did you employ your drivers?

A. Always.

326 Q. Did you own your own equipment?

A. As before.

Q. About how many pieces of equipment did you own while you were operating out of 1409 South 8th Street?

A. Well, I owned two, and I had one under a lease agreement.

Q. Which made three units in operation during that entire time?

A. Yes.

Q. Now, around March 1, 1937, there was a written document prepared and signed by you and Mr. Shandalov and Mr. Baulos; can you tell the Examiner the circumstances whereby that document was signed?

A. Well, I had been pressing Shandalov for a settlement on this tonnage basis.

Mr. LATOURETTE. If this testimony goes to vary the terms of this written instrument, I want to make an objection to it. I don't know whether it is preliminary to the signing or not.

Exam. ANGLE. We will let him proceed and let us see what develops.

By Mr. HOPEWELL:

Q. Continue, Mr. Rosenblum.

A. I was asking him to make this so-called tonnage settlement, because my operation was handling the greater volume of the tonnage. And while I was being credited on this so-called "trip" basis, why, I was anxious to know, after seeing my
327 tonnage pro rata charges, what my balance was. I figured that I had money coming, although I knew the man couldn't pay me; but I was anxious to know just what it was. And in pressing him for this here settlement, why, he hee-hawed

around and around for some time; and he struck on the idea that in view of the fact that I was hauling the greater amount of the tonnage that it is possible that I owed him money. And to save a lot of expense, he figured he would have to hire help to check all of these bills of lading, and the manifests, and the records to determine just what the tonnage would be—that he would be willing to take a chance, as he called it, and just let all of this here settlements, just forget about them, and to start out from scratch, what he termed is a working agreement as to the terminal. And so Baulos was in town at the time and we agreed to it. And then I signed the thing; and a few days later I went up to Mr. Hopewell's office, as I often do about other matters—he has been my attorney for twenty years. And I told him—the fact is, I think he knew that I was having trouble getting a settlement; and he didn't know anything we could do. And I told him what I had decided to do to clear the thing up. So right away he wanted to see what I signed; so I went back and got it, and he said that he didn't think that was the right thing to do.

Mr. LATOURETTE. I move that be stricken.

Mr. HOPEWELL. That may be stricken as to what I said.

328

Mr. LATOURETTE. And I further move that the testimony which is of the character as to vary the terms of this instrument be stricken.

Exam. ANGLE. Any matter that would add to or detract or take away or enlarge the contract will be stricken from the record. At this moment I can't see where he testified particularly—

Mr. LATOURETTE. He has testified he signed a working agreement.

Mr. HOPEWELL. No, he said that Mr. Shandalov called it—

By Exam. ANGLE:

Q. What do you mean by working agreement, do you mean the partnership agreement?

A. Yes, sir; that is what it is headed up; but his idea that it would be a working agreement.

Exam. ANGLE. I know, but after all you signed what is shown to be a partnership agreement?

A. Yes, I did.

By Mr. HOPEWELL:

Q. Then, after the conference in my office a day or so subsequent to the writing of that document, was there any other document?

A. Well, I immediately went back, and Baulos was still in town, and I told him that this thing is liable to run me into a lot of difficulty and I couldn't have it, and we would have to take

the other ones up. And so Mr. Shandalov conveniently misplaced his, couldn't find his.

329 Q. You mean his copy of the partnership agreement?

A. Yes; he couldn't find his at all. I don't know what he done with it.

Q. Then what was done?

A. I just kept on harping about the thing; and finally I had this thing drawn up and I just insisted that they sign that to get me out of the middle; and that is what they done.

Q. Now, after that document was executed, did you put any money into the partnership, or put any assets into this arrangement?

A. None whatsoever.

Q. After this document dated March 1, 1937, was signed, was your method of operation changed in any manner?

A. None at all.

Q. Were the books of records of the Over Nite Freight Service changed, that you know of?

A. No; nothing was done or changed, anything that had previously been kept.

Q. Then, do I understand that after the document dated March 1, 1937, was executed by the three of you, you just continued along until February 1938 as you had been since March 1936?

A. That's right.

Q. Now, around February 28th, 1938, you had some more conferences with Mr. Shandalov, with reference to operating out of his terminal over at Geyer Avenue, it was at that time?

A. 301 Geyer.

330 Q. When you moved from South 8th Street, up to 301 Geyer, did you have anything to do with renting or leasing the terminal premises up there?

A. None at all.

Q. The negotiations for that space, then, was handled entirely, so far as you know, by Mr. Shandalov?

A. I understand he had a lease in his name.

Q. When did you finally determine to withdraw from the terminal at 301 Geyer Avenue?

A. In the latter part of February 1938.

Q. Will you tell the Examiner just what brought about your decision to withdraw from that terminal?

A. Well, in the first place I couldn't get a settlement out of the man for the subsequent date after 1937, or even for 1936; and the fact that I was in the same terminal with the man was causing me no little embarrassment.

Q. In what way?

A. Well, particularly my insurance coverage. Other ways as to—

Q. Do you know whether or not in February 1938 the Over Nite Freight Service was involved financially?

A. Well, no doubt; because he was always trying to get me and Baulos to put money into the thing; that he already owed me money, I knew.

Q. By the way, around March 1, 1937, was any conversation had between you and Mr. Shandalov with reference to your putting any money into the Terminal, providing you had gone into this partnership arrangement?

A. Yes; he was anxious for me to put money in at that time.

Q. That was about March 1, 1937?

A. That's right.

Q. I believe certain of the exhibits offered here this afternoon showed that on March 15th, 1937, Mr. Shandalov borrowed fifteen hundred dollars from the Mutual Bank in St. Louis; do you know about that?

A. Yes, I do.

Mr. LATOURETTE. Just a minute; I object to that. There are no documents dated March 15th, 1937, in the form of notes.

Mr. HOPEWELL. The ones I have here are all dated March 15, 1937, three of them.

Mr. LATOURETTE. You are right; I was looking at the due dates.

Exam. ANGLE. You may proceed.

By Mr. HOPEWELL:

Q. Now, Mr. Shandalov testified that when these three notes which have been identified here as Applicant's Exhibit No. 17, that when these notes were signed, that he pledged your accounts receivables?

The WITNESS. A. Well, I think that that is so silly that it does not make any sense. I don't see how a banker would lend a man money on another man's accounts receivable.

Q. Did you exact any sort of a paper by the bank when these notes were executed, whereby your accounts receivables were pledged with the bank to secure these notes?

A. Absolutely not.

Q. Now, getting down to the latter part of February 1938, will you tell the Examiner what, if any conversation you had with Mr. Shandalov with reference to your withdrawing from the terminal?

A. Well, I gave the man notice that I could no longer stay there and that I was making plans to withdraw. And it bothered him no little; he had lots to say about—

Q. Just tell the Examiner what he did say with reference to your withdrawal from the terminal at 301 Geyer Avenue?

A. Well, he told me he didn't feel like he could keep the terminal quarters, that the rent was too much, and that he couldn't keep the office force on; that he didn't know any operator, any other operator that he could bring in there to replace that revenue he was getting from me towards those expenses, and that it would force him out of business. And he had no other way of making a living, and that if he was going to be put out of business that he was going to any end to put me out of business.

Q. What further, if anything, did he say as to what he was going to do to put you out of business, provided you moved from that terminal?

A. Well, he reminded me of this here document that he never did produce; and he said he has got it, and that he will use that for any purpose that he can to even put all of us in bankruptcy, or just anything; just anything he could think of.

Q. Now, I believe that you and Mr. Shandalov and probably Mr. Baulos were in my office with reference to your withdrawing from the terminal; is that correct?

A. That is right.

Q. Do you recall what, if anything, Mr. Shandalov said on the occasion that he was in my office, when this subject was being discussed?

A. Well, he made many propositions, one of them about buying his equipment and his operator rights; and I think he told everybody just what he would do if we would not satisfy him.

Q. Now, as the result of one of the conferences there in my office you and Mr. Baulos bought the office equipment and the terminal equipment which belonged to the Over Nite Freight Service?

A. That is right.

Q. Now, the bill of sale which has been offered in evidence here dated February 28th, 1938, signed by Mr. Shandalov, as the Over Nite Freight Service, covered, I understand, all of the office equipment at the Chicago office and terminal, and at the St. Louis office and terminal?

A. That is right.

334 Q. Do you recall, then, what you paid Mr. Shandalov for all of the office equipment at St. Louis and Chicago, including the garage equipment?

A. Yes, sir; three hundred and fifty dollars.

Q. And in what manner was that payment made?

A. Well, just in the manner that he wanted it, \$275.00 in a check made out to the Over Nite Freight Service, \$75.00 in a check made out to William Shandolov. I might say now that that amount was determined. Mr. Shandolov called in the Holstein Fixture Company; and Mr. Holstein did appraise the fixtures in St. Louis, and wrote to Mr. McDonald in Chicago, to have an appraisal of the fixtures there. And Mr. Holstein appraised the fixtures at his office in St. Louis for \$135.00; and Mr. McDonald mailed down the appraisal from Chicago which was \$65.00; which made a total of \$200, and for which we agreed to pay him \$350.00, because it was worth that to us; they were already in place and in use, and we wouldn't have to shop around to buy any and discommode ourselves in any way. And then he wants to tell these people that we paid him \$275.00 for one third of them.

MR. LA TOURETTE. We object to that type of testimony; it is not responsive, and it is argumentative. Move it be stricken.

MR. HOPEWELL. It may be stricken, that portion.

335 EXAM. ENGLE. Strike that last statement from his testimony, Mr. Reporter.

By MR. HOPEWELL:

Q. I will ask you to state, Mr. Rosenblum, when you bought the property February 28th, 1938, you acquired all of the interest of the Over Nite Freight Service, or whether you just acquired Mr. Shandolov's one-third, as he testified?

The WITNESS. Say that again.

Q. Mr. Shandolov testified that the bill of sale merely covered his one-third interest in the fixtures and equipment described in the document; I ask you to tell the Examiner whether or not you bought his one-third or whether you bought the full ownership?

A. Bought the full ownership; all the fixtures.

Q. At that time were you and Mr. Baulos claiming any title or ownership in any of that property?

A. No.

Q. At the time, if I understand it, you withdrew from the terminal at 301 Geyer Avenue, you and Mr. Baulos established a terminal of your own at 20th and Pine?

A. That's right.

Q. And the office equipment and the garage equipment mentioned in the applicant's Exhibit 11 was moved by you and Mr. Baulos from 301 Geyer Avenue to 20th and Pine?

A. That's right.

Q. Then I believe you later on established a terminal of your own?

336 A. Yes.

Q. Where is that today?

A. At 2125 Olive Street.

Q. How long have you been at that place?

A. Since July of 1938.

Q. July of 1938?

A. Yes.

Q. And the fixtures and equipment mentioned on Applicant's Exhibit No. 11, what disposition was made of that?

A. I have part of them, and part of those Baulos has.

Q. Does Mr. Baulos have any interest in your terminal at 2125 Olive Street?

A. None.

Q. Has he had any since you established it in July 1938?

A. None.

Q. And you have no interest in Mr. Baulos' terminal at 20th and Pine Street?

A. None.

Q. And haven't had any interest in that terminal since you sold it out in July 1938?

A. June.

Q. In June 1938?

A. That's right.

Q. Now, Mr. Shandolov testified that after you and he and Mr. Baulos had been up to my office and had been up to
337 Mr. Aronoff's office, that you went to Rabbi Epstein?

A. That's right.

Q. You were there at the time?

A. Yes, sir.

Q. Will you tell the Examiner just what conversation you had with the Rabbi, with reference to your operations at 301 Geyer Avenue—I mean, in the presence of Mr. Shandalov?

A. Well, we discussed the proposition, like I says before, about what it would mean to him if we withdrew from his terminal, and the position it would leave him in. And he made a plea to the Rabbi, the financial position he was in, and all that sort of thing; and he wanted to leave it with the Rabbi as to just what he thought should be done about it.

Q. Did the Rabbi make a decision as to what should be done?

A. Yes, he did.

Q. Did you comply with your part of the Rabbi's decision?

Mr. LATOURETTE. Well, now, I submit that that is not competent evidence, what the Rabbi's decision was.

Exam. ANGLE. We don't know what this decision is; I don't know—he has not testified what the decision was, or what the agreement was.

By Mr. HOPEWELL:

Q. Did the Rabbi finally suggest that you do, and suggest that Mr. Shandalov do, at the conference when Mr. Shandalov was present?

A. What did he suggest?

338 Q. Yes.

A. Well, he said according to the law I don't owe the man anything; but on account of the man's position, that he is left in, in view of the fact that we never have had a settlement, don't know whether I owe him some money or he owes me some money, in view of the fact that he was in a position to cause me embarrassment, which I was trying to avoid, that it would be worth a certain amount to just give him that as a contribution to just let him be satisfied and leave me alone.

Q. Now, what was Mr. Shandalov to do, provided you deposited the sum of money suggested by the Rabbi?

A. He was to—the first thing he was to do, he was to produce this long lost document; and then he was to go out and pay all obligations where I had recommended him to the different tradesmen; in fact, just leave me out of any embarrassment from that point on, or hereafter. That is what he was supposed to do.

Q. He deposited the agreement?

A. He did.

Q. And when that was done you deposited a certain sum of money with the Rabbi?

A. Certified check.

Q. What happened to that check that you deposited with the Rabbi?

A. Well, I got it back.

Q. Was there some reason for it being returned to you?

339 A. A very definite reason.

Q. And what was that reason?

A. The reason it was not forty-eight hours after the check was deposited with the Rabbi that the man had done just exactly what he was not supposed to do.

Q. What was that?

A. Well, the first discovery we made was that he had a sheaf of photostatic copies and he was just distributing them around just like a man campaigning for a deputy marshal.

Q. And had he discharged any of the financial obligations of the Over Nite Freight Service, where you had more or less recommended the credit to the man?

A. No, none; then he used this other tack: He was going to have the four hundred dollars and tack all of these obligations on me, on top of it.

Mr. LATOURETTE. Well, now, I have let this go along; I submit, this is all immaterial to the issues and have no bearing on whether there was or was not a partnership agreement. I am going to have to move that all that be stricken.

By Mr. HOPEWELL:

Q. I am going to ask you whether or not you were at any time a partner of Shandalov and Truman E. Baulos?

Mr. LATOURETTE. Object to that, on the grounds it varies the written instrument which this witness says himself he signed, and which said bore on its face that they are partners; and
340 were prior to the execution of the agreement.

Exam. ANGLE. I will sustain the objection; the document speaks for itself.

By Exam. ANGLE:

Q. Did you know your legal responsibility when you signed the document to become partners with Mr. Shandalov?

A. Well, not exactly; but then I immediately took care of the legal responsibility; that is, to Mr. Hopewell.

Q. About what date was that?

A. Some three or four days later.

Q. Did you file a petition in court to dissolve this partnership?

A. File a petition? No, because the partnership was never put in execution, that I know.

Mr. LATOURETTE. I move that be stricken, because the instrument itself shows it was in existence on the first of March, and had been theretofore in existence.

Mr. HOPEWELL. The mere signing of that document does not create a partnership. They could have signed that and immediately forgotten all about it, which apparently they did.

Exam. ANGLE. I don't know what would make a person a partner any better than signing a partnership agreement.

Mr. HOPEWELL. We could all sign an agreement, Mr. Examiner, to say we were partners, but if we do nothing to put the
341 object of the document in operation, then we are not partners, even though we think we are. And, on the other hand, even though we did not sign a document, yet by our action did things that created a partnership—

Mr. LATOURETTE. But the fact that the document says heretofore they have been associated indicates that they are simply ratifying previous acts of partnership by the written agreement. You are attempting to vary what is in the record now.

Mr. HOPEWELL. We want to get this record complete, however, that they never did anything as partners at any time, whether before that, at the time it was signed, or after. It would only be by their acts, prior, at the time and subsequent to the signing of the document that they could—

Mr. LA'TOURETTE. It gets to the point again that they said in writing that heretofore they have been associated, they have a one-third interest in each other's business; they put that in writing, ratifying the previous partnership, which they have in writing said existed, and now you are attempting to vary that.

Mr. HOPEWELL. We are attempting to show it never existed.

Exam. ANGLE. I think that the partnership agreement is the best evidence in this case; and I don't mind your asking him any general questions, just as long as you do not add to, de-
342 tract, subtract, or take away from the legal import of that document. Whether or not they acted under it or not, they were in a position to act under it. I don't know whether or not they held themselves out to the public to act as partners, or not.

Mr. HOPEWELL. I will get to that, your Honor. Of course, Shandalov himself said he never held himself out to anybody, that they harbored it in their own bosom.

Mr. MILLER. The contract shows on its face that it was the intention to hide it and keep it from being known.

Mr. HOPEWELL. They had the same right to cancel that document as they had to sign it.

Exam. ANGLE. Mr. Shandalov has testified that they operated under this contract arrangement. Mr. Rosenblum testifies they they did not. Just one word against the other, it appears to me.

Mr. LA'TOURETTE. That's right.

Exam. ANGLE. And I don't know where we are going to get any place trying to verify the terms of that contract, because it refers to unexplained matters.

Mr. ARONOFF. Just as they have a right to enter into the agreement, I presume we admit they have a right to cancel the agreement; and where the two parties are diametrically opposed to each other as to what the agreement is now in force, then
343 the acts of the parties themselves in the conduct of their business prior to, at the time of the signing and thereafter should throw light on what they had actually intended to do.

Mr. HOPEWELL. Not only that, but what they did do.

Mr. MILLER. That would go towards interpreting the contract, but not the terms.

Mr. ARONOFF. It would go to determine which is now in force.

Exam. ANGLE. You may proceed.

By Mr. HOPEWELL:

Q. Well, then, Mr. Rosenblum, between February 1, 1936 and March 1, 1937, did you have any oral agreement with William Shandalov and Truman E. Baulos to operate a partnership known as the Over Nite Freight Service?

A. No.

Mr. LATOURETTE. I make the same objection, on the same grounds.

Exam. ANGLE. That writer contract refers to, it is my understanding, the agreement heretofore under which they operated.

Mr. LATOURETTE. Heretofore been associated together as equal partners.

Mr. HOPEWELL. The Examiner permitted Mr. Shandalov to testify they had been in business during that time; I think we have a right to rebut that.

Exam. ANGLE. This is admittedly rebuttal testimony to what Mr. Shandalov testified to?

Mr. HOPEWELL. Certainly, that is part of the man's
344 entire testimony. It is all rebuttal testimony.

Exam. ANGLE. Of course, you know this testimony that comes in here is in defeat of this written instrument here.

Mr. HOPEWELL. Sure.

Exam. ANGLE. You may proceed.

Mr. HOPEWELL. We wanted to show that instrument was a nullity, by reason of the fact that the parties never recognized it. Not only not before it was signed, but at no time subsequent to the time it was signed.

Exam. ANGLE. That is all right; you may proceed.

By Mr. HOPEWELL:

Q. Now, after this document was signed on March 1, 1937, Mr. Rosenblum, did you ever make it known to the public that you were partners with Mr. Shandalov and Mr. Baulos?

A. No, sir.

Q. Did any of your creditors, or anyone that you dealt with?

A. No, sir.

Q. I will ask you to tell the Examiner under what name you conducted your business from March 1, 1937 down to February 28th, 1938?

A. N. E. Rosenblum Truck lines.

Q. And now between February 1936 and March 1, 1937, how did you conduct your operations?

A. N. E. Rosenblum Truck Lines.

Q. And previous to February 1936, how did you conduct
345 your business?

A. N. E. Rosenblum Truck Lines.

Q. And how are you conducting your business today?

A. N. E. Rosenblum Truck Lines.

Q. Now, from February 1936 to March 1937, did you have your own stationery?

A. Yes, sir.

Q. Waybills?

A. Yes, sir.

Q. Bills of lading?

A. Yes, sir.

Q. Statements?

A. Everything.

Q. Whose name was on those?

A. My name.

Q. Now, during 1936, did you make a federal and state income tax return?

A. I did.

Q. Whose name was that in?

A. My name individually.

Q. For the year 1937 did you make a state and federal income tax return?

A. Yes, sir.

Q. Whose name was that in?

A. My name individually.

Q. Did you ever sign an income tax return as a partner with Mr. Baulos or Mr. Shandalov?

A. No, sir.

Q. Now, on the Social Security returns for your employees, who made those?

A. I did.

Q. In whose name did you make them?

A. Mine.

Q. N. E. Rosenblum Truck Lines?

A. Right.

Q. Did you at any time ever receive any profits from the operations of the Over Nite Freight Service?

A. No, sir.

Q. Were you ever at any time up to February 28th 1938 called upon by Mr. Shandalov to share in the lawsuits of the Over Nite Freight Service?

A. No, sir.

Q. Who hires the bookkeeper there at the Over Nite Freight Service?

A. Shandalov.

Q. Who paid his Wages?

A. Shandalov.

Q. The other employees that were there, who hired those?

A. Shandalov.

Q. Who paid their wages?

A. He did.

347 Q. Now, in arriving at the income from your operations for the purpose of making your income tax returns how did you obtain that information?

A. From the trips made.

Q. And was there a fixed schedule of rates for each truck operation?

A. Yes, sir.

Q. Was that under contract with the shippers?

A. How do you mean?

Q. These trips that you made, say from St. Louis to Chicago?

Mr. LA TOURETTE. Well, now, I object to that; the record in the previous hearing shows that those carriers did nothing but transport freight for common carriers between the docks, up until February 1, 1936.

Mr. ARONOFF. This whole thing starts February 1, 1936; I believe your question was from February 1936 on.

Mr. HOPEWELL. Up to February 1938.

Exam. ANGLE. Between what dates did you say?

Mr. HOPEWELL. February 1936 until February 1938.

Exam. ANGLE. That is all right, isn't it?

Mr. LA TOURETTE. Yes.

The WITNESS. It is all based on net revenue, gross revenue less the expense would make the net revenue.

By Mr. HOPEWELL:

348 Q. Your income tax return, then, as I understand it, was in no wise governed by the profit and loss of the Over Nite Freight Service?

A. No, sir; an individual return?

Q. Did you carry your own insurance from February 1936 down to February 1938?

A. All forms; yes, sir.

Q. In your own individual name?

A. Yes, sir.

Q. Do you recall, Mr. Rosenblum, ever discussing the legality or illegality of this alleged contract around December 1936, with Mr. Shandulov and Mr. Baulos?

A. Well, we discussed it in a general way; we had no idea just what it was, or what the legality was.

Q. I said in 1936; in December?

A. December 1936?

Q. Yes; that was before the hearing?

A. Oh, no.

Q. On your applications?

A. No; I made my application in the regular way, just like any operator would.

Q. But there was a hearing on it in December 1936?

A. That's right.

Q. Shandalov testified that he didn't know whether you had talked about the legality or illegality before the hearing or after; do you recall ever having talked about the legality or illegality before this alleged hearing?

A. No.

349 Q. You do recall some discussion about it after the document was signed?

A. Yes, sure; you are the one that brought that up.

Q. Was that the only time you ever discussed it with Mr. Shandalov and Mr. Baulos?

A. Yes.

Q. Was after the time you and I had talked about it?

A. That's right.

Q. Did you at any time ever claim any ownership in any certificate that might be issued to Mr. Shandalov?

A. No, sir.

Q. Have you at any time ever claimed any ownership or right to ownership in any permit that might be issued to Mr. Baulos?

A. No, sir.

Mr. HOPEWELL. I believe that is all.

Cross-examination by Mr. LATOURETTE:

Q. Now, Mr. Rosenblum, you said you didn't make it known to the public that you were partners, in response to direct examination of your counsel, did you not?

A. That's right.

Q. Well, your contract provided that you were to hold yourself out to all outside intentions and purposes that you were individuals; did it not?

A. The contract said that?

Q. Yes.

A. Perhaps.

350 Q. Well, don't you know whether it did or not?

A. No; not until I see it. If it is on there, why, that is the way it might read.

Q. Do you see the statement for all outside intentions and purposes that you are to hold yourself out as individuals?

A. It is in there.

Q. So you were only doing what you had agreed in writing in this contract of March 1937, weren't you?

A. Well, I signed that document, if that is what you want to know.

Q. Well, and then following that you did that for all outside intentions and purposes, let it be known that you were operating as partners?

A. Why, no; because I never was.

Q. I say you were only doing what you agreed to do in writing, in this contract?

A. Well, if you want to tie one with the other up; yes.

Q. Yes; that is what the contract says; now, with respect to your income tax returns and other matters of that character, you were also doing that pursuant to the written contract, weren't you—isn't that true?

A. No; I can't say it is true, because, as far as I am concerned that never was in operation; and I was not doing anything.

Q. Well, it is a fact that the written instrument that is
351 headed "partnership agreement" sets forth that you are to all outside intentions and purposes representing yourselves as handling your business individually?

A. Yes, the agreement says that.

Q. Now, do you know whether or not under the law the partnership is required to file partnership returns, or does the individual members file the returns for the income he receives from the partnership?

A. Well, I don't know what the law is; I imagine a partnership, if it actually is a partnership, certainly would file a partnership return.

Q. You don't think that the individual composing the partnership would file individual returns setting forth their income from the partnership?

A. No, I don't see how they could.

Q. Now all the money that came from these operations went into a bank account under the name Over Nite Freight Service, did it?

A. That's right.

Q. Now, in Applicant's Exhibit No. 8, and in Exhibit B thereof, headed "Statement of Income, Profit and Loss" under the item "Less Expenses" you notice an item of insurance, \$3,097.36; isn't it a fact that represented insurance covering the operations of Baulos, Rosenblum and Shandalov?

A. Well, perhaps it does; but that would all be charge-
352 able to my prorata of the operating expense.

Q. But, it is a fact that in the statement of income, profit and loss that the insurance for the three carriers named in this partnership agreement is charged as expense, is it not?

A. Perhaps.

Q. Well, it is not perhaps; isn't it in there?

A. Yes; but I don't know just how that breaks down.

Q. I say now isn't it a fact that Exhibit B contained within applicant's Exhibit No. 8 on the statement headed, "Statement of

Incomes, profit and loss" shows under the item of expenses the insurance for the three operations?

A. I don't know.

Q. You don't know whether that is \$3,097.36 for one carrier or whether it is for three; is that what you want the Examiner to understand?

A. That's right; I don't know whether that is the gross amount or the break-down of the account.

Q. How about your licenses and taxes for the three operations; were they paid out of the one account of the Over Nite Freight Service?

A. No, I buy all my licenses.

Q. Well, now, isn't it a fact that in this same exhibit there is charged an item of \$484.52 for licenses and taxes?

A. Yes.

Q. Isn't it a fact that that is the expense of those items
353 for the three operations?

A. No; I wouldn't say that.

Q. Well, would you say that it was not?

A. No, I would say that it was not.

Q. Is there any place in this statement which includes the analysis of your operations where N. E. Rosenblum Truck Lines is charged with any license tax expense?

A. No, except that item is held open against the tonnage basis credit which I have coming from the man.

Q. There is nothing in that statement indicating any charge against you, however, is there?

A. In this statement? No, that would be my analysis; that would not be in that statement.

Q. Well, where is it in your analysis?

A. I don't know.

Q. Can you show me where it is in your analysis?

A. I don't know. I think the books would show better than this as to where it is actually charged.

Q. Well, isn't that a true statement of expenses of the operation, and analysis of the individual operations of the parties?

A. Well, there are a lot of charges here; there are charges for repairs, and this and that, all debited to my account.

Q. Mostly drivers' names, are they not?

A. No. GMAC, Ashland, Rifler, Sterling Steel, Downtown Chevrolet, Monarch Petroleum—

354 Q. Do you see anything there where you are charged with licenses and tax—as a matter of fact, isn't it true, Mr. Rosenblum that matters of licenses, taxes and insurance are charged as items against the combined operations of the three companies?

A. No; charged against the revenue, which is then when the tonnage was going to be settled for, why, then that would be deducted from the amount due me which would be my net account.

Q. But you have not been able to show me where in this exhibit there is any charge for you?

A. No, because I have never been able to get a settlement from Mr. Shandalov.

Q. You mean you never got any money from him?

A. Yes.

Q. I see.

A. The only amount there that is as an operating amount, that I would necessarily need to pay my drivers and operate my trucks.

Q. Then you were to get whatever profits there were above the actual operating expense?

A. That's right, on my operation.

Q. On your portion of it?

A. Yes.

Q. And that conformed to what the agreement is that is set forth in this partnership agreement, doesn't it?

A. Well, the partnership agreement there, as I remember it, ties the three parties in. But my agreement was the agreement that we originally had was on the tonnage bases; which, as far as I was concerned, was never charged from March 1936.

Q. But you expected, in addition to this flat figure you got for each truck that moved—

A. That's right.

Q. Either from St. Louis to Chicago or Chicago to St. Louis, a certain percentage over and above that, of the profits that were realized from the operations of the three parties, didn't you?

A. No; on my tonnage only, handled only in my name.

Q. Well, how was that profit arrived at?

A. By figuring the gross revenue on the load, less the initial amount that was allowed to each truck, which was either \$30.00 or \$32.50; and the remainder was set up into this general fund which was going to be split up as to the tonnage handled, as to just what my charge was going to be for the specified time, and the difference would be coming to me on my particular operations.

Q. Well, then, are you contending that instead of one-third of the profits as set forth in your partnership agreement you should have gotten a percentage of the profits based on the tonnage handled, and as it relates to the total tonnage handled out of the terminal?

A. I should have gotten the difference of the cost to me for handling the particular volume of tonnage—deduct that amount

from the difference of the amount that was advanced
356 to me, and the balance, if any, would be my profit.

Q. Now, there are other items in Exhibit B-8, contained within Applicant's Exhibit 8, under the heading of Expense; such as legal and auditing, \$529.37; ice and salt, \$1,711.60; does this exhibit show in any place where you were charged with that?

A. Well, that all brings us back to this here nonsettlement for all of these expenses; I certainly could not afford to do that out of the advance that I got.

Q. You were never charged specifically here with this, were you—any place shown on this exhibit?

A. No; it would first have to be determined that the ice, for instance, whether I bought that for the handling of my freight, or whether Baulos bought it for the handling of his, or whether Shandalov bought it for the handling of his. That would all have to be checked out.

Q. You do not operate a terminal in Chicago today, do you?

A. I do.

Mr. LATOURETTE. That is all.

Mr. HOPEWELL. That is all.

(Witness excused.)

Mr. HOPEWELL. Mr. Andrews, will you come forward, please?

LEE ANDREWS. was sworn, and testified as follows:

357 Direct examination by Mr. HOPEWELL:

Q. Will you state your name, please?

A. Lee Andrews.

Q. Where do you live?

A. At 3559 Vista.

Q. In St. Louis?

A. St. Louis.

Q. What business are you in?

A. Bookkeeper for the Rosenblum Truck Lines.

Q. How long have you been with the Rosenblum Truck Lines?

A. Since June of this year.

Q. Were you at any time connected with the Over Nite Freight Service?

A. I was the bookkeeper.

Q. During what period of time?

A. From about May 1936 to February 1938.

Q. Did you open up the books, by the way, for Over Nite Freight Service?

A. No, sir; they were already set up when I came in.

Q. Were those books maintained as a partnership bookkeeping systems or an individual bookkeeping system?

A. They were maintained as a terminal account, I would say.

Q. As a terminal account?

A. Yes.

Q. Operated by whom?

A. By the Over Nite Freight Service.

358 Q. And who was the Over Nite Freight Service, as you understood it?

A. William Shandalov.

Q. Up until February 1938, did you ever hear it said that N. E. Rosenblum or Truman E. Baulos were partners in the operation?

Mr. LATOURETTE. I object to that as calling for a legal conclusion.

Mr. HOPEWELL. Let me withdraw it.

Mr. LATOURETTE. After all, the partnership shows on its face.

By Mr. HOPEWELL:

Q. During the entire time that you were with the Over Nite Freight Service, did you ever hear William Shandalov say that N. E. Rosenblum and Truman E. Baulos were partners in the operation?

Mr. LATOURETTE. Object to that as seeking to vary the terms.

Exam. ANGLE. I think it is all right if he heard—

The WITNESS. The first time I ever heard of any partnership was when they decided to go into different terminals.

By Exam. ANGLE:

Q. When was that?

A. Oh, I would say January or February of this year.

By Mr. HOPEWELL:

Q. During the time you were bookkeeper for the Over Nite Freight Service, were you ever called upon for any manner
359 of statement showing what the profits of the terminal were, and to allocate those profits to anyone outside of Mr. Shandalov?

A. No, sir; I closed my books, but I never did make a profit and loss statement on them. Mr. Kahn, a certified public accountant came in and made all the closing entries.

Q. By the way, did you make out social security returns from month to month while you were there?

A. Yes, sir.

Q. Those on behalf of the employees of the Over Nite Freight Service, by whom were they signed?

A. William Shandalov.

Q. As the owner of the Over Nite Freight Service?

A. Yes, sir.

Q. Is that true during the entire period that you were there as his bookkeeper?

A. Yes, sir.

Q. Did Mr. Rosenblum make out any of those social security returns?

A. I had three; one for Rosenblum, one for Shandalov, and one for Baulos.

Q. They were all individual?

A. Yes, sir.

Q. Each signing them and swearing they were their respective returns?

A. Yes, sir.

Q. Do you know whether income tax returns were made
360 as a partnership for the year 1936 and 1937?

A. I didn't make any income tax report up, but I would say from memory that it was in three income tax reports.

MR. LATOURETTE. I move that that statement be stricken, if the witness didn't make them.

MR. HOPEWELL. Well, he said if his memory served him.

THE WITNESS. That would be on record.

EXAM. ANGLE. You didn't make any yourself?

A. No—could I add to that?

By EXAM. ANGLE:

Q. You may amplify your answer.

A. Mr. Kahn, this accountant, made the income tax report.

Q. You didn't know anything about the income tax reports at all?

A. No; he made them.

Q. You don't know what they contained?

A. No, sir.

EXAM. ANGLE. Is that all right, Mr. LaTourette?

MR. LATOURETTE. Yes; that is all right.

By MR. HOPEWELL:

Q. Mr. Andrews, during the course of the hearing there has been identified a document known as Applicant's Exhibit No. 14, which purports to be a document dated March 5, 1937, bearing the admitted signatures of Truman E. Baulos and William Shandalov and N. E. Rosenblum; do you recall whether or not around about
361 that date Mr. Shandalov came in to you one day and said one of his drivers wanted a recommendation, and that he was in a hurry, or something; and he just signed a letter in blank and handed it to you to fill out?

A. No, sir; he did not. I never wrote a recommendation for anybody.

Mr. LATOURETTE. Just a minute; the testimony of the witness Shandalov was that was done in 1938.

Mr. HOPEWELL. Perhaps you are right—

By Mr. HOPEWELL:

Q. I will ask you whether or not, around February 1938, or the early part of March 1938, Mr. Shandalov came in to you one day and said one of his drivers wanted a recommendation, and either you were in a hurry or he was in a hurry and the matter could not be written up at that time; and he took the original of that document and wrote his name on it and handed it to you in blank and asked you to just write a recommendation and give it to the driver?

The WITNESS. No, sir; I never did write a recommendation for a driver.

Q. Did he ever ask you to write a recommendation for a driver?

A. No, sir.

Q. In 1938, or any other time?

A. In fact, I wouldn't write that kind of a letter; Mr. Moriarity would have written it, he did all the letter writing.

362 Q. I believe he did on March 15 come in and have a letter written by you, or someone, directed to you, instructing you not to turn over any checks that came in to the Over Nite Freight Service?

A. Yes, sir.

Q. You are sure now he never handed you a blank piece of paper and told you to write a recommendation for some driver?

A. Positive.

Q. Now, after you received the directions on March 15, 1938, to withhold remittances made payable to the Over Nite Freight Service, did you obey that?

A. I turned them over to Mr. Shandalov. In fact, what I did receive I made him give me a receipt for it; and I think I still have the receipts.

Q. Did Truman E. Baulos or N. E. Rosenblum, prior to February 15, 1938, make any claims to any checks that came in to Over Nite Freight Service?

A. No, sir.

Q. Do you know whether or not a change in mailing address was given to the postal department after Mr. Rosenblum and Mr. Baulos left the terminal there on Geyer Avenue?

A. On whose handwriting?

Q. So far as the Over Nite Freight Service was concerned?

A. It was transferred somewhere on Bayrd Avenue, where Mr. Shandalov lived at that time; 1300 something, I think it is.

363 Mr. HOPEWELL. You may inquire, Mr. LaTourette:

By Exam. ENGLE:

Q. On the capital account on these books, in whose name was that capital account kept?

A. William Shandalov.

Q. There was no other capital account at all—was that a sole proprietorship set of books?

A. Yes, sir.

Q. No other capital account at all?

A. That was the only capital account. I think Mr. Shandalov has the books.

Exam. ANGLE. Proceed.

Cross-examination by Mr. LATOURETTE:

Q. You were a witness in a proceeding in Judge Griffin's court, were you not?

A. What Court is that?

Q. In June of this year—Court of the Criminal Correction?

A. I believe so; yes, sir.

Q. Do you remember being interrogated as to whether or not you were working for three people, Mr. Shandalov, Mr. Rosenblum, and Mr. Baulos at that time?

A. No; I do not.

Q. You don't remember that?

A. I don't remember the question asked me.

Q. Do you remember any discussion while you were on the witness stand as to your being employed by the parties that I named?

364 A. I remember they asked me who signed my checks.

Q. But you don't recall that they interrogated you with respect to your employment and whom you were working for?

A. I don't remember distinctly; no, sir. I do remember he asked me several times who signed my check.

Q. All of the funds that came in at the terminal, whether they were for operations of Mr. Rosenblum or Mr. Baulos or Mr. Shandalov were put in one common bank account?

A. Yes, sir.

Q. And all of the bills were paid out of that bank account?

A. That is right.

Q. For the three operations?

A. Yes.

Q. And who signed those checks?

A. Mr. Shandalov and myself.

Mr. LATOURETTE. That's all.

(Witness excused.)

Mr. HOPEWELL. Mr. Chervitz, will you come forward, please?

FRANK CHERVITZ was sworn, and testified as follows:

Direct examination by Mr. HOPEWELL:

Q. Will you state your name, please?

A. Frank Chervitz.

Q. Where do you live, Mr. Chervitz?

365 A. At 710 Westgate, University City, Missouri.

Q. That is just a suburb of St. Louis?

A. That is correct.

Q. What is your business or occupation, or profession?

A. I am a public accountant.

Q. And where is your office?

A. International Office Building.

Q. How long have you been in the accounting business, Mr. Chervitz?

A. Since 1922.

Q. At my request, or at Mr. Rosenblum's request, did you examine the books of the Over Nite Freight Service at 301 Geyer Avenue, St. Louis, Missouri?

A. I did.

Q. Do you recall about when that was?

A. It was some time in February of 1938, I believe.

Q. And did you again, about a month ago, examine those books in a proceeding in one of the local courts here?

A. I did.

Q. Can you tell the Examiner and the Commissioner here, from your examination of those books, whether it reflects the operation of an individual, or the operation of a partnership?

Mr. LATOURETTE. Object to that question, as being the further attempt to vary the terms of this instrument; and certainly,
366 it could not be told from any books whether or not they are partners.

Mr. HOPEWELL. We are not attempting, your Honor, to vary the terms of that contract; we are attempting to show that contract was never in force.

Exam. ANGLE. As I understand accounting, from my small knowledge of it, where there is a contribution of partnership there is a separate contributed share set-up for each partner on the books, capital contributed. Of course, if this man audited these books or investigated these books, or made a check of the books, why, I think it is perfectly all right for him to testify about it.

By Mr. HOPEWELL:

Q. I will ask you to state whether you made an examination or investigation of the books for the purpose of determining whether there was a partnership or whether it was an individual.

The WITNESS. That was the purpose of my examination. I suggested to Mr. Rosenblum when he consulted me—he merely wanted advice; I told him the only thing I could do was to determine from the books and records whether a partnership existed.

Q. Can you suggest to the Commission how you would determine whether the books were those of a partnership or an individual? Is there some method whereby that is set-up?

A. I can. I think as the Commissioner stated I looked to the capital account to determine just how they were set up.
367 There was a capital account for William Shandalov and no other capital account. Then I looked to the closing entries, closing profit and loss into capital entries, and I found they were closed out entirely into Mr. Shandalov's capital account. I then asked for copies of auditor's reports; I thought that would help me. And several copies of reports were submitted me, of reports rendered by Adolph Kahn, Public Accountant, St. Louis. These reports were rendered to William Shandalov operating as Over Nite Freight Service. To my mind, those facts convinced me that it was individual, rather than partnership.

Q. Did these charges to capital account reflect profit and loss at different times?

A. Yes; it reflected profits or loss; and they were closed out to the William Shandalov capital account.

Q. How many years was that for, or months, or periods?

A. Well, I don't recall the exact dates. I traced back the general ledger from its inception up until the date I was there. And in all cases that was the condition it reflected.

Q. In other words, in the inspection of the books you started with your examination from the dates the books were opened?

A. That is correct.

Q. And followed that through to the date that you were there, which was either in February or January of last year?

A. That is correct.

368 Q. And nowhere in those books could you find where any capital investment or credit of that nature had been set-up to N. E. Rosenblum or Truman E. Baulos?

A. Couldn't find them.

Q. Either as original investment or as profit and loss?

A. That is so.

Q. Did you see anywhere in those books where the original capital investment of William Shandalov of the other two was

\$50.00 each—in your examination of the records, did you see any record where each one of them had started out with a capital investment of fifty dollars?

A. No, sir.

Q. Your investigation of the capital assets disclosed what as to equipment?

A. Equipment was set-up there as an asset; as I did not primarily look into the account of the equipment.

Q. You did not look to see who owned that particular asset, equipment?

A. No.; it was merely the assets were set-up on the book.

Q. Didn't show whether owned by Mr. Rosenblum, Mr. Baulos, or Mr. Shandalov?

A. The mere existence of the one capital account would indicate to my mind that ownership was vested in that one party; I didn't examine to see the individual's title.

Q. Do you recall how many pieces of equipment were shown in this capital account?

A. No, sir; I made no examination of that at all.

Q. Did you observe among those records that they carried what they call an operators' account?

A. Yes; I noticed an operators' account there.

Q. And under that appeared the names of various truckers that operated in and out of the terminal?

A. That's right.

Q. And those accounts, the profit and loss of those accounts, as I understand, were charged finally to Mr. Shandalov's investment?

A. That went in with the entire closing. All the expense and income accounts were closed out, and the net difference closed out to Mr. Shandalov's investment.

Q. Did you notice, in inspecting the books and going over them, whether there had been any change in the capital structure around March 1, 1937?

A. No; I didn't notice any change at all.

Q. In other words, it had not been divided up into three parts around that date, had it?

A. No, sir.

Q. As I understand it, it continued right straight from the beginning down in the name of William Shandalov?

A. That's right.

By Exam. ENGLE:

370 Q. At whose instance did you make this check of these books?

A. At Mr. Rosenblum's instance.

Q. You had nothing to do with the preparation of the statements here that have been introduced in evidence?

A. No, sir; I suggested that I look at the books. Mr. Rosenblum came to my office at the request of a friend of mine and told him I helped him with some advice, merely asked my advice generally; and I told him I didn't see where I could help him in any way.

Q. How far did you go into these accounts—you didn't run anything back?

A. No; I didn't make a detailed audit. I merely looked at the capital account and the other items that would indicate to my mind the nature of the organization; and that is all.

Mr. HOFEWELL. You may examine.

Cross-examination by Mr. LaTourette:

Q. Mr. Chervitz, have you ever known of a partnership existing where there are silent partners who are members of the partnership organization?

A. Where there are silent partners; yes, I have.

Q. And in those cases, by reason of the fact that there are silent partners, isn't it true that the capital account might not necessarily reveal the fact?

A. The capital account might not reveal the name of the partners, but it would, in my own experience—and I have
371 some companies where that condition exists today; we have a blank capital account, or a capital account divided without the specific names mentioned.

Q. Have you in your experience known of any silent partnerships where the capital account is not separated in parts?

A. Merely shown in one name?

Q. Yes.

A. I don't think so; I don't think I have come across anything like that.

Q. You wouldn't say there were such situations in your method of practice?

A. It wouldn't be possible for me to say that.

Q. Now, did you know with respect to Mr. Rosenblum, Mr. Baulos, and Mr. Shandalov, that they had executed a written form of partnership agreement, March 1, 1937?

A. Mr. Rosenblum mentioned to me there was some sort of an agreement, which he did not have, as a partnership agreement, but I never saw the instrument.

Q. Did you observe in your examination that the funds coming in from all operations—and by that I mean the combined operations of Shandalov, Baulos, and Rosenblum—were all checked in and deposited in one bank account?

A. It seemed that as far as I could see casually; I didn't make a detailed inspection; it seemed to me that all receipts were entered on the books.

372 Q. I am speaking now of receipts that resulted from the operations of Mr. Rosenblum, those of Mr. Baulos, and also that of Mr. Shandalov?

A. Yes, as I recall the operating accounts.

Q. I am talking now about receipts that came in.

A. That is what I am trying to explain; as I recall, they had Operator accounts; and when money came in, it seems that money was credited to these operator accounts.

Q. I am speaking now of the manner of depositing funds; did you observe that the receipts from combined operations of these three were all deposited to one bank account?

A. Seemed to be only one bank account.

Q. And did you observe that the expenditures were all made from the same bank account?

A. All expenditures; but I didn't notice the nature of the expenditures.

Q. I am speaking of all expenditures.

A. All disbursements, I would say.

Q. All made from the same bank account?

A. That is right.

Mr. LATOURETTE. That is all.

Re-direct examination by Mr. HOPEWELL:

Q. Mr. Chervitz, in examining the cash book, do you recall whether there were three columns there, one of them headed
373 Shandalov and another one headed Rosenblum and another one headed Baulos?

A. Yes.

Q. And when a remittance would come in it would be entered under that individual name?

A. As far as I could notice; I made no great examination for details; as far as I could notice it would seem that they were credited to those various columns.

Q. I mean in the cash book; didn't they have three columns?

A. That's right.

Q. And when a remittance came in for Mr. Shandalov, it was credited to his column?

A. That's right.

Q. And when a remittance came in for Mr. Rosenblum it was put under his name in that book and credited to the—

Mr. LATOURETTE. Object to counsel leading the witness.

Exam. ANGLE. Ask him questions.

By Mr. HOPEWELL:

Q. I will ask you, then, if you can describe to the Examiner the condition of the cash book as you observed it, with reference to the receipts?

Mr. LATOURETTE. Of course, the answer has already been suggested to the witness, I would like the record to show.

Exam. ANGLE. As to the fact, what he remembers.

Mr. HOPEWELL. We tried to get the books here.

Exam. ANGLE. Let him testify to the fact that he
374 he saw the books; can you do that?

The WITNESS. Yes. As I say, the books, the cash book, was divided into various columns. There were columns for N. E. Rosenblum, Mr. Baulos, and Mr. Shandalov, and miscellaneous column of some sort. Money that came in seemed to be divided either into the Rosenblum column, the Baulos column, the Shandalov column, or this miscellaneous column; and from that I assumed that that money came from sources that were applicable to those particular people.

By Exam. ENGLE:

Q. Was that for statistical purposes; do you know?

A. No, I don't know.

Q. You don't know?

A. No, sir.

Q. But that money that was segregated was deposited as Over Nite Freight Service, as you recall?

A. That is right.

Mr. HOPEWELL. That is all.

Re-cross examination by Mr. LATOURETTE:

Q. You don't know what proportion of the revenues or credits were represented by those respective columns, do you, as related to the whole?

A. The proportion of the revenues as related to the whole; no, sir.

Q. You say you made this examination back in February
1938?

375 A. That's right.

Mr. LATOURETTE. That's all.

(Witness excused.)

Colloquy

Exam. ANGLE. Do you have anything further?

Mr. HOPEWELL. No.

Mr. LATOURETTE. I would like the record to show, if the Examiner please, that the protestants in this case caused to be issued

a subpoena on Mr. J. Hugh Walsh, connected with the Cobb-Walsh Insurance Agency, which subpoena shows on its face as having been served by Mr. C. F. Ewing; and this witness was called and subpoenaed for the purpose of testifying with respect to certain insurance policies that were effective in 1936, and more particularly around February 18, 1936. I am told by Mr. Ewing that upon his arrival at Mr. Walsh's home he was met by a nurse who said that Mr. Walsh was ill and could not appear in response to the subpoenae, and referred us to his doctor. Mr. Ewing tells me then he talked with Mr. Walsh, and saw that he was in bed; and Mr. Walsh referred him to Doctor Reed for a statement of his inability to attend the hearing. I would just like the record to show that, so that if it is necessary at some future time to ask for the reopening of this case for the purpose of introducing that evidence, that it appear in this record that the protestants made diligent efforts to subpoena this witness and have him here.

376 **Exam. ANGLE.** That is noted on the record; it speaks for itself. If the Commission wants to grant a further hearing, it is up to them.

Mr. ARONOFF. Mr. Examiner, I would also at this time like the record to show that we have confined our evidence in conformity with the petition for reopening to introduce newly discovered evidence as mentioned by the protestants; and that if the Commission rules that this further hearing was for the introduction of evidence of the entire operation, that the applicant not be penalized in his inability to furnish it at this time, because he was under the impression that the rule confined the evidence to that requested in the petition for reopening. I would like the record to show that.

Exam. ANGLE. It is in the record.

Mr. ARONOFF. And to clarify the record, I would reiterate the statement made at the previous hearing that the proof of this applicant's operation is wholly for routes 1 to 15, between St. Louis and Chicago and Waukegan, as designated in the appendix of the application, and the application is amended so as to abandon their operation there in the other states as listed in the original application.

Exam. ANGLE. You mean the appendix to the recommended order in the prior hearing?

377 **Mr. ARONOFF.** Yes, that the claim is only for those operations, and abandonment of all other routes.

Mr. LATOURETTE. I have a motion to make; I would like to move, if the Examiner please, that the application of N. E. Ro-

senblum be dismissed—I mean N. E. Rosenblum doing business as N. E. Rosenblum Truck Lines, for the reason that the record shows during the period of February 1936, to and including approximately April 1, 1938, the operations were not that of N. E. Rosenblum, an individual doing business as N. E. Rosenblum Truck Lines, but that of a partnership composed of N. E. Rosenblum, Truman E. Baulos and William Shandalov; and that there has been an interruption of any operations whatever their character might be, as an individual.

Mr. MILLER. The Western Truck Lines Committee would like to adopt that, also.

Exam. ANGLE. The motion will be taken under advisement. Do you all wish to file briefs?

Mr. ARONOFF. We do.

Mr. LATOURETTE. If the applicant does, we will, too.

Mr. ARONOFF. Those briefs due at the same time as the briefs in the original hearing.

Exam. ANGLE. Yes; if extension of time is required, such extension should be asked for at least seven days before the due date.

Briefs will be due December 28th.

378 Exam. ANGLE. Is there anything further?

(No response.)

Exam. ANGLE. If there is nothing further, the hearing is closed. (At 9:30 o'clock P. M., hearing was closed.)

379 Before Interstate Commerce Commission

No. MC-FC 11278

Application for substitution: N. E. Rosenblum Truck Lines, Inc., Purchaser, St. Louis, Missouri, and N. E. Rosenblum, Doing Business as N. E. Rosenblum Truck Lines, Seller, St. Louis, Missouri

Order granting application for substitution

Feb. 9, 1939

It appearing, that the transaction for which authority is sought in the above-entitled matter, being application of N. E. Rosenblum Truck Lines, Inc., under the Motor Carrier Act, 1935, for substitution as applicant in No. MC 13853, in lieu of N. E. Rosenblum, doing business as N. E. Rosenblum Truck Lines, is not subject to the provisions of section 213 of the said act.

It further appearing, that N. E. Rosenblum Truck Lines, Inc., is fit, willing and able properly to perform service authorized by the operating rights sought to be acquired and to conform to the provisions of said act and the requirements, rules, and regulations thereunder.

It is ordered, that said application for substitution be, and it is hereby, granted.

It is further ordered, that nothing herein contained shall be construed as a determination of the rights of any person or persons under any provision of the act except those relating to transfer of operating rights as expressly provided herein.

By the Commission, division 5.

[SEAL]

W. P. BARTEL,

Secretary.

NOTE.—Docket No. MC-13853 has been assigned to the purchaser covering the operating rights transferred by this order.

380 Before Interstate Commerce Commission

No. MC-13853

N. E. Rosenblum Truck Lines, Inc., Contract Carrier Application

No. MC-36692

Jacob B. Margolies (Successor in Interest to Truman E. Baulos)
Contract Carrier Application

Order denying applications

July 1, 1940

Investigation of the matters and things involved in these proceedings having been made, and said division, on the date hereof, having made and filed a report herein containing its findings of fact and conclusions thereon, which report is hereby made a part hereof:

It is ordered, that said applications be, and they are hereby, denied, effective August 20, 1940.

By the Commission, division 5.

W. P. BARTEL,

Secretary.

BEFORE INTERSTATE COMMERCE COMMISSION

No. MC-13853

N. E. Rosenblum Truck Lines, Inc., Contract Carrier Application,
St. Louis, Mo.

No. MC-36692

Jacob B. Margolies Contract Carrier Application, St. Louis, Mo.

Order denying petitions for reconsideration

Oct. 1, 1940

Upon consideration of the record in the above-entitled matters and of applicants' petitions for reconsideration or further hearing; and good cause appearing:

It is ordered, that the said petitions be, and they are hereby, denied.

By the Commission.

W. P. BARTEL,
Secretary.

BEFORE INTERSTATE COMMERCE COMMISSION

Docket No. MC-36692. Form BMC-A

In the Matter of: THE APPLICATION OF TRUMAN E. BAULOS, OF 1314 WEST JACKSON BOULEVARD, CHICAGO, ILLINOIS, FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY OR PERMIT (FORM BMC-A) AUTHORIZING OPERATION AS A COMMON OR CONTRACT CARRIER BY MOTOR VEHICLE IN THE TRANSPORTATION OF COMMODITIES GENERALLY, IN INTERSTATE COMMERCE, IN THE STATES OF ILLINOIS AND MISSOURI OVER THE ROUTES SET FORTH IN SAID APPLICATION

CHICAGO, ILLINOIS,
December 1, 1936, 3 p. m.

Before Joint Board 135; represented by Hon. HARRY A. BARR, Commissioner, Illinois Commerce Commission, Springfield, Illinois.

Present: William A. Maidens, Examiner, Interstate Commerce Commission.

Met pursuant to notice.

Appearances

M. E. Aronoff, 369 Paul Brown Building, St. Louis, Missouri, appearing for Truman E. Baulos.

Harry M. Slater, 901 South Michigan Avenue, Chicago, Illinois, appearing for Central States Motor Freight Bureau, Inc., and Chicago-St. Louis operators, St. Louis, Missouri.

J. H. Wright, 135 East 11th Place, Chicago, Illinois, appearing for Illinois Central Railroad Company and Committee of Railroads representing Western Trunk Lines.

Proceedings

386 Mr. BAER. Is the applicant ready in Docket MC-36692, application of Truman E. Baulos?

Mr. ARONOFF. Yes; the applicant is here.

Mr. BAER. I will read the order of the Interstate Commerce Commission setting this case for hearing.

"At a session of the Interstate Commerce Commission, Division 5, held at its office in Washington, D. C., on the 7th day of November A. D. 1936, Docket No. MC-36692.

"In the matter of the application of Truman E. Baulos, of 1314 West Jackson Boulevard, Chicago, Illinois, for a certificate of public convenience and necessity or permit, Form BMC-A, authorizing operation as a common carrier by motor vehicle in the transportation of commodities generally, in interstate commerce, in the States of Illinois and Missouri, over the following routes:

"Route No. 1. Between St. Louis, Missouri and Chicago, Illinois.

"Route No. 2. Between Aurora, Illinois, and St. Louis, Missouri.

"Route No. 3. Between Chicago, Illinois, and Aurora, Illinois.

"A more detailed statement of route or routes, or territory, is contained in said application, copies of which are on file and may be inspected at the office of the Interstate Commerce

387 Commission, Washington, D. C., or offices of the boards, commissions or officials of the states involved in this application.

"It appearing, that the above-entitled matter is one which the Commission is required by the Motor Carrier Act, 1935, to refer to a joint board:

"And it further appearing, that the joint board named below is the proper board to which said matter should be referred;

"It is ordered, that the above-entitled matter be, and it is hereby, referred to Joint Board No. 135 for hearing on the 1st day of December A. D. 1936, at 10 o'clock A. M., Standard time,

at the Sherman Hotel, Chicago, Illinois, and for recommendation of an appropriate order thereon accompanied by the reasons therefor;

"It is further ordered, that notice of this proceeding be duly given.

"And it is further ordered, that any party desiring to be notified of any change in the time or place of the said hearing, at his own expense if telegraphic notice becomes necessary, shall advise the Bureau of Motor Carriers of the Commission, Washington, D. C., to that effect by notice which must reach the said Bureau within ten days from the date of service hereof and that the date of mailing of this notice shall be considered as the time when said notice is served.

388 "By the Commission, Division 5.

"GEORGE B. MCGINTY,

"Secretary."

Will you give your appearances to the reporter, please?

Mr. ARONOFF. M. E. Aronoff, 369 Paul Brown Building, St. Louis, Missouri, appearing for Truman E. Baulos.

Mr. BARR. Any other appearances?

Mr. WRIGHT. J. H. Wright, representing the Illinois Central Railroad Company and the Committee of Railroads representing Western Trunk Lines.

Mr. SLATER. Harry M. Slater, representing the Central States Motor Freight Bureau, Inc., and Chicago-St. Louis operators.

Mr. BARR. Mr. Slater, you have presented a petition here to intervene in this case?

Mr. Slater. Yes, sir; I have. Did I furnish you with a copy?

Mr. BARR. Yes.

Mr. SLATER. Does anyone else want a copy?

Mr. BARR. Are there any objections to the intervening of the Central States Motor Freight Bureau, Inc., as a party to this proceeding?

Mr. ARONOFF. No, sir.

Mr. BARR. If there are no objections, the Central States Motor Freight Bureau, Inc., will be permitted to intervene and
389 become a party to the proceedings.

Mr. ARONOFF. Are there more than one intervening?

Mr. BARR. Only one on this petition. I do not know whether there are any others or not.

Mr. SLATER. That is right. I want to enter the appearance also for the Chicago-St. Louis operators.

Mr. BARR. Were they original parties to this proceeding?

Mr. SLATER. No.

Mr. BARR. Did they receive notice?

Mr. SLATER. No, we did not receive notice either, so far as notice is concerned. I might state that the Central States Motor Freight Bureau, Inc., is an association, a non-profit organization, representing six hundred common carrier operators in Central Freight Association territory. The St. Louis operators are those operators operating between Chicago and St. Louis and they are also members of the Central States Motor Freight Bureau, Inc.

Mr. BARR. Are you asking that this association be made a party to this proceeding, or are you just showing your appearance here for the purpose of listening in?

Mr. SLATER. Just as stated in the petition that has been filed.

Mr. BARR. I don't know that I had one.

Mr. SLATER. That is it [indicating].

Mr. BARR. Who was the last party you mentioned that
390 you wanted to enter their appearance?

Mr. SLATER. That is the same petition and in the same form. The Chicago-St. Louis operators are members of this association and their position in this matter will be identical with the position of the Central States Motor Freight Bureau, Inc.; and the petition filed for the Central States Motor Freight Bureau, Inc., may be received and is offered as a petition in behalf of the Chicago-St. Louis operators. That is another group of operators, all members of this Bureau.

Mr. ARONOFF. We have had no particular notice up until this very moment, and although it is my understanding that under an informal hearing, any person having any interest has the right to intervene, and I have no objection to the cross examination of our witnesses, I assume that that is as far as their activity in the matter goes.

Now, if that means the production of witnesses for the bringing in of any new matter, we certainly should be given some opportunity to have a complaint filed and examined. That is my understanding, and I am willing to abide by the ruling of the Commission on that point.

Mr. SLATER. I am informed that the Chicago-St. Louis operators did file a formal petition with the Commission, that is a petition of intervention, although I have not seen it.

Mr. ARONOFF. Nor have we.

Mr. SLATER. It is not necessary, however, in this matter—
391 perhaps you are not acquainted with the procedure—it is not necessary to file these interventions at the hearing.

Mr. ARONOFF. I just stated that.

Mr. SLATER. Yes.

Mr. ARONOFF. But I have stated that I have not seen a notice of that petition, if one has been filed.

Exam. MAIDENS. It is customary to permit intervention insofar as it does not broaden the issues.

Mr. ARONOFF. Inasmuch as I have not seen the one that has been filed, I am wholly in the dark now.

Exam. MAIDENS. I do not think there is one in the application. I do not remember having seen it.

Mr. SLATER. Counsel evidently is not familiar with these proceedings. It is not necessary to file a petition of any kind.

Mr. BARR. You may proceed, and I will check that up. Do you care to make a statement in regard to your case?

Mr. ARONOFF. No.

Mr. BARR. Do the other parties desire to make any statement at this time?

(No response.)

Mr. BARR. If not, you may proceed and call your witness.

TRUMAN E. BAULOS was sworn and testified as follows:

DIRECT EXAMINATION

392 Mr. BARR. You may proceed.

Mr. ARONOFF. Before proceeding with the examination, I have two contracts that I am going to file as exhibits, but I would like at this time to inquire if there will be any objection to the filing of the contracts as they appear here, without having someone from the shipper here to identify the contract, because I must call them if they will be necessary, and so I would like to know about that.

One is a contract from Swift & Company, signed by C. H. McAuley, endorsed by Elmer J. Nelson, notary public.

The other is a contract of Libby, McNeill & Libby, signed A. W. Bankert, assistant traffic manager and by T. E. Baulos, and not endorsed before a notary public and I would like to know if I can put them in. If there are no objections, it will not be necessary to call these shippers.

Mr. SLATER. I would like to see them.

(The documents referred to were passed to Mr. Slater.)

By Mr. ARONOFF:

Q. Mr. Baulos, where do you live?

A. I am living at the present time at 8000 South May Street, Chicago, Illinois.

Q. And do you have your business located here?

A. I do.

Q. And where is that?

A. 4000 Packers Avenue.

Q. How long have you been there?

393 A. I have been there since February. I cannot state the exact date of that, but February.

Q. February of what year?

A. February of 1936.

Q. What was your business or occupation on and prior to July 1, 1935.

A. At that time I was employed as a contract carrier by the E. H. Hoffman Lines, operating between Chicago and St. Louis, Missouri.

Q. When did that employment take place?

A. I purchased the first trucks March 4, 1934.

Q. You purchased your first piece of equipment?

A. Yes, sir; that is right, tractor and trailer.

Q. Where did you make that purchase?

A. I purchased the tractor from the Shelby Motor Company, Charleston, Missouri, and the trailer from the Herman Body Company, St. Louis, Missouri.

Mr. ARONOFF. Will you mark these documents, please, Mr. Reporter. Mark this applicant's Exhibit No. 1.

(Applicant's exhibit 1, Witness Baulos, identified.)

By Mr. ARONOFF:

Q. I hand you applicant's exhibit No. 1 and ask you to tell us what that is?

A. It represents a true and original copy of an invoice for a 1934 Ford Tractor and a Model 421 trailer and body, serial No. 33-569.

394 Q. And what is the date of that purchase?

A. The date of that purchase? The order was placed March 8, 1935. The invoice date is 4/10/34. That is a typographical error here. This is 1934.

Q. And with relation to this date of 4/10/34, when did you begin hauling for the Hoffman Lines?

A. Immediately.

Q. And under what arrangement did you haul for that line?

A. I was contracting with E. H. Hoffman to haul at so much a load, the contract price being a load rate.

Q. Between what points?

A. Between St. Louis, Missouri, and Chicago, Illinois, and various other points intermediate.

Q. What other points did you haul to?

A. Springfield, Illinois, Joliet, Lincoln, Illinois, Bloomington, Illinois, Decatur, Illinois, Aurora, Illinois, and from a number of other outlying points.

Q. Who operated that equipment?

A. I did.

Q. You operated that?

A. That is right.

Q. Now, did you purchase any additional equipment?

A. I did. Some two months later I purchased almost an identical outfit. I cannot give the exact date from memory.

Mr. ARONOFF. Will you mark this applicant's Exhibit 395 No. 2, please.

(Applicant's exhibit No. 2, Witness Baulos, identified.)

By Mr. ARONOFF:

Q. I will hand you applicant's exhibit No. 2 and ask you to tell us what that is?

A. That is a true and exact copy of the original invoice of a Herman trailer, Model 421, serial No. 33-592.

Q. When was that purchased?

A. The date of the order or the date the order was given was 5/31/34; the delivery invoice date was 6/12/34.

Q. This equipment was delivered to you June 12, 1934?

A. That is right.

Q. And who operated that equipment?

A. I hired an extra driver to operate that piece of equipment.

Q. And who paid that driver?

A. I paid him.

Q. And for whom did he haul?

A. He hauled for the E. H. Hoffman Lines, under contract with the Hoffman Lines.

Q. Was that an oral or written contract?

A. That was an oral contract.

Q. Were you obligated to haul exclusively for the E. H. Hoffman Lines?

A. I was not.

Q. Did you at that time haul for anyone else?

A. I did.

396 Q. Who else did you haul for?

A. I hauled for various carriers such as Ill.-Mo. Trucking Service, who at that time were located at 1240 Transit Avenue, Chicago, Illinois.

Q. Anyone else?

A. Yes, during the course of that time the Hoffman Company hauled for the Be-Mac Transport Company.

Q. When you say during that time you are referring to after June 12, 1934?

A. After June 12, 1934; yes, sir.

Q. And did you purchase any equipment?

A. I did.

Mr. ARONOFF. Will you mark this applicant's exhibit No. 3. (Applicant's exhibit 3, Witness Baulos, identified.)

By Mr. ARONOFF.

Q. I now hand you applicant's exhibit No. 3 and ask you to tell us what that is.

A. That represents a true and exact copy of the original invoice of another model 421 Herman trailer, Serial No. 34-662.

Q. And when was that purchased?

A. It was purchased on June 11, 1935, and delivered June 25, 1935.

Q. And who operated that piece of equipment?

A. It required a third man that I hired, a third man to operate that.

397 Q. When you say a third man, do you mean two other men besides yourself?

A. That is right.

Q. Did you at any time hire any additional men?

A. Yes, I had to, shortly after I purchased the third trailer; I had to hire three men to operate.

Q. And did not operate yourself any more?

A. No, sir; I did not. That is, I did not drive them. I had them in operation under my supervision.

Q. Was that a daily service?

A. It was.

Q. And for all three trucks?

A. Yes, sir.

Q. And between what points?

A. As I have stated before, the same points.

Q. Between those points?

A. That is right.

Q. Did you service any other points?

A. Subsequent to the date of the purchase of the third trailer.

Q. From your first one, which was 4/10/34, and you bought your last one on June 25, 1935, during that time and afterwards, did you service any other points?

A. Afterwards I did, yes.

Q. How much later?

A. I would say six months later.

398 Q. Some time in 1936?

A. That is right. Pardon me just one moment there; that might have been the latter part of 1935 or the early part of 1936.

Q. How long were those trucks in operation under the contract with the Hoffman Lines?

A. Until I severed my connections with him October 1, of 1935.

Q. From the time you started operating with Hoffman until the time you severed your connections, under whose control and supervision were those trucks?

A. Under mine.

Q. You hired and fired your men?

A. That is right.

Q. Who took care of your fire and theft policies?

A. The fire policies were carried by the finance company who financed the trailers.

Q. You had those three trailers financed?

A. That is right.

Q. Do you recall what company financed your trailers?

A. The Securities Investment Corporation, C. I. T. Corporation and General Motors Acceptance—or no, not the General Motors Acceptance; strike that. The Midland Acceptance Corporation—

Q. The Midland Acceptance Corporation?

A. The Midland Acceptance Corporation was later purchased by the C. I. T. Corporation. Instead of being the G. M. C., that should have been the Universal Credit Company.

399 Q. And you paid the notes to each of those various finance companies?

A. I did.

Q. Now did you ever solicit any business?

A. I did.

Q. From the shippers?

A. Yes, sir.

Q. Who did you solicit from?

A. I solicited and secured a contract in September—I do not recall the exact date, but I think it was September 17, that I secured a contract from Swift & Company, September 17, 1934.

Q. Who did you deal with there?

A. I dealt with Mr. Tate, Mr. E. E. Tate and Mr. McAuley.

Q. What are their positions?

A. Mr. Tate is in the traffic department. I might say he is chief dispatcher for them and Mr. McAuley is head of trucking for Swift & Company in the United States and Canada.

Q. You secured a contract?

A. I did, sir.

Q. Between what points?

A. Between Chicago, Illinois, and East St. Louis, Illinois, and St. Louis, Missouri.

Between Chicago, Illinois, and Kansas City, Missouri.

May I refer to that contract, please?

400 Mr. WRIGHT. We object to reference to any other cities than are given in the notice sent out by the Commission in connection with this hearing.

Mr. ARONOFF. We are not claiming the right. He is explaining the contract. I will go into the disposition of these other

points later. We are not claiming any right for territory outside of that mentioned in the application. We are not claiming any right of territory into Missouri, I mean Kansas City, for instance. I do not see what objection there would be to his referring to the contract as to just what it states.

Mr. BARR. Does it cover the freight that we are concerned with in this application?

Mr. ARONOFF. Yes, it does.

Mr. WRIGHT. It goes beyond. It goes beyond that.

Mr. BARR. Of course, on any other operation than that which you have applied for, I do not see that that testimony would be material.

Mr. ARONOFF. It would not be material and I had intended to ask Mr. Baulos just what was done with the existing operation, how it was handled, whether he handled it or somebody else handled it. I imagine that would answer the question.

Mr. BARR. What is the purpose of that, to show that he is an experienced operator?

Mr. ARONOFF. To show he had that contract and to show just the way he handled that contract.

401 Mr. BARR. Well, he may answer.

The WITNESS. As counsel stated, I am not interested in any movement other than that named in my application to the Commission. This was merely put in here possibly for future use, but I did not intend to use and have not used, it.

By Mr. ARONOFF:

Q. Mr. Baulos, did you ever move any shipments for Swift & Company from Chicago to Kansas City?

A. I did not.

Q. Or from St. Louis to Kansas City?

A. I did not.

Q. Under that contract, what shipments were moved?

A. Shipments between Chicago, Illinois, East St. Louis, Illinois, and between Chicago and St. Louis, Missouri.

Q. Were there any moving from St. Louis, Missouri to Chicago, Illinois?

A. I said between, back and forth.

Q. Back and forth?

A. Yes, sir.

Q. Now at the time you secured that contract, who handled the shipments on that contract?

A. This merchandise was handled with my equipment, with tractors and trailers, but the billing was placed on the Hoffman bills.

Q. The traffic cleared through Hoffman?

A. That is right.

Q. And was your compensation based on an agreement
402 with Hoffman?

A. It was.

Q. Now did you solicit anyone else?

A. I solicited Libby, McNeill & Libby, Chicago, Illinois. I secured a contract with them in March of 1935.

Q. Do you know what points that contract covered?

A. That covered the operation between Chicago, Illinois, and East St. Louis; between Chicago, Illinois, and St. Louis, Missouri; between Eureka, Illinois, and St. Louis, Missouri; and between Chicago and Eureka. There might be another point or two that I cannot recall from memory.

Q. And were those commodities handled in the same manner?

A. In the same manner; yes, sir.

Q. Handled for Hoffman Lines?

A. That is right.

Q. You say that arrangement continued until when?

A. That arrangement continued until I severed my connection with the E. H. Hoffman Lines, in October of 1935. I cannot say that that is the exact time, but it was late fall.

Q. But on July 1, 1935, that was generally one of your operations?

A. It was.

Q. Were you hauling commodities other than those of Libby, McNeill & Libby and Swift & Company?

A. I was. I was hauling general merchandise.

403 Q. For whom?

A. For the E. H. Hoffman Lines and the Ill-Mo Trucking Service.

Q. Those were the two that you were hauling for?

A. That is right.

Q. And after you severed your connection with the Hoffman Lines, what did you then do?

A. I made a connection with the Be-Mac Transport Company as their office manager in Chicago, Illinois.

Q. And did you continue to operate your equipment?

A. I did.

Q. Under what arrangement did you then operate that equipment?

A. I operated under contract for various carriers, such as Be-Mac Transport, Consolidated Forwarding, Trans-American, Western Trucking, and various other common carriers.

Q. And between what points?

A. All of those operations were—or most of those operations, I might say, were between Chicago and St. Louis.

Q. And how often?

A. Every day.

Q. You say that at that time you were office manager for the Be-Mac Company?

A. Be-Mac Transport Company.

Q. In the operation of the trucks?

A. Yes, sir.

Q. And how long did that continue?

401 A. I cannot say just when I left the employ of the Be-Mac Transport Company, but I think it was sometime in the early part of February 1936.

Q. The early part of February 1936?

A. Yes, sir.

Q. Where did you then go?

A. I took my business to 4000 Packers Avenue, and entered into a contract with the Overnite Freight Service, hauling merchandise between Chicago and St. Louis, and also hauling for other carriers which I named above.

Q. Other carriers besides Overnite Service?

A. That is right. I might add in there, such as Viking, Trans-American, Be-Mac, and Monarch Truck Lines.

Mr. ARONOFF. Will you mark these applicant's exhibits 4 and 5?

(Applicant's exhibits 4 and 5, Witness Baulds, identified.)

Mr. ARONOFF. May I offer in evidence Applicant's exhibits 1, 2, 3, 4, and 5?

Mr. BARR. Are there any objections to the exhibits marked applicant's exhibits 1, 2, 3, 4, and 5, being admitted as evidence?

Mr. WRIGHT. We have not examined them all and I believe I would like to examine them and also cross-examine the witness before they are admitted.

Mr. SLATER. If we may reserve that right at the present 405 time, I think it will save time.

Mr. BARR. The ruling on their admission will be reserved.

Mr. ARONOFF. There isn't a question about our service to the shipper. That is the point I had in mind before, and if there was, I would call those men in, and I believe you said there was no objection to that.

Mr. SLATER. About the signatures—I said there was no objection to them.

Mr. ARONOFF. All right.

By Mr. ARONOFF:

Q. Now this last operation with the Overnite Freight, where were your offices?

A. 4000 Packers Avenues, Chicago, Illinois.

Q. And do you have any terminal in St. Louis?

A. I do, at 1409 South Eighth Street.

Q. You made an application in time for a permit as a contract carrier?

A. I filled out the B. M. C., A February 11, 1936.

Q. 1936?

A. Yes, sir; 1936.

Q. And did you file a schedule on minimum rates?

A. I did.

Q. That is I. C. C. No. 1?

A. Yes, sir.

Q. Issued March 23, 1936? Effective April 1, 1936?

A. That is right.

406 Q. Have you been in continuous operation since July 1, 1935, to date?

A. I have.

Q. And how many pieces of equipment do you now own?

A. Well, I and the finance company own three.

Q. Are they the same three that we referred to here?

A. They are not.

Q. What changes have taken place?

A. I had the misfortune to lose two of them by fire, and I naturally had to replace.

Q. And you have purchased others since?

A. I have.

Q. But you still have three pieces of equipment?

A. I still have three pieces of equipment; that is right.

Q. Do you hire any other equipment?

A. I do.

Q. How many pieces of equipment do you hire?

A. When it becomes necessary, from one to four trucks, such as my needs require.

Q. And those movements are between the points you mentioned?

A. They are.

Q. Are those the points that you have designated in your application?

A. They are.

407 EXAM. MAIDENS. When you get this new equipment, who operates the equipment and drives the trucks?

A. One man usually drives it.

Q. And he is driving it as your agent?

A. That is right. I cover him with insurance.

Mr. ARONOFF. That is all on direct.

Mr. BARR. Do you have other witnesses who are going to testify more with regard to the operations he had to carry on?

Mr. ARONOFF. Do you mean as to the routes?

Mr. BARR. Yes.

Mr. ARONOFF. No, I had better ask him on that. I thought I could cut that out.

Mr. BARR. No, I want you to show what routes he used.

By Mr. ARONOFF:

Q. I show you this document, is that a copy of the application filed?

A. It is a copy of the memorandum; yes, sir.

Q. Now will you tell us what territory you covered in that application?

A. From St. Louis, Missouri, to Chicago, Ill. From Aurora, Illinois—

Mr. BARR. Over what routes did you travel from St. Louis, Missouri, to Chicago, Illinois?

The WITNESS. Over U S 66 and Illinois 48. Now I might go more into detail on those routes if I had a map of southern Illinois.

Mr. BARR. I would like to have that. Do you have a
408 map of your operations?

The WITNESS. Yes, sir.

By Mr. ARONOFF:

Q. Just explain to the Commission in detail the route that you use in that operation.

A. The routes that I use in that operation from St. Louis, Missouri, to Chicago, Illinois, is route 67 to Edwardsville, Illinois, then route 66 to the junction of Illinois 48; thence 48 to the junction of U S 45; and U S 45 to the junction of Illinois 50. That puts you into the city of Chicago.

U S 66 from St. Louis to Chicago, Illinois.

From Chicago to Aurora, thence via Route U S 34 to the junction of U S 51; thence U S 51 to the junction of U S 66; thence 66, that is, U S 66, to St. Louis, Missouri.

I think that covers the routes. I might mention that those routes, as the Commission knows, serve such points as Springfield, Illinois; Decatur, Illinois; Bloomington, Illinois; Lincoln, Illinois; Joliet and Kankakee, Illinois; and East St. Louis, Illinois; from St. Louis to Chicago, Illinois.

Q. Now when you mention those routes, you mean a movement in both directions?

A. That is right, between points.

Q. And did you at any time during the dates covered in your testimony, operate on any other routes than those mentioned in your testimony?

A. I did.

409 Q. What other routes did you operate on?

A. Well, it would take quite a bit of detail to go into that. However, there were lots of intrastate shipments handled out of Chicago, and I might add that some interstate shipments were handled out of Chicago prior to July 1, 1935.

Q. The routes you have mentioned, are the ones you have applied for as a contract carrier?

A. They are.

Q. During your beginning of operations in 1934 and through the time you were with Hoffman and Be-Mac, did you have any invoices or manifests in your own name, or were they billed through the Hoffman Lines?

A. The only thing I might have would be manifests. I am not supplied at this moment, but I have in my possession manifests of several of the different common carriers for whom I have hauled merchandise under contract, such as Be-Mac, E. H. Hoffman Lines, and others.

Q. When did you bill under your own name?

A. I billed under my own name after March, I think it was, March of 1936.

Mr. ARONOFF. I think that is all.

Mr. BARR. Cross-examine.

Cross examination by Mr. WRIGHT:

Q. Mr. Baulos, I am going to ask you with reference to your operations entirely prior to July 1, 1935.

410 A. Yes, sir.

Q. I understand that you started your operations shortly after you purchased your first trailer and body in April 1934; is that right?

A. That is right.

Q. Who furnished the engine portion of the units?

A. I think you will find that the engine on that—well, that particular item there is a deal that I might go into and explain.

Q. Just answer my question, who furnished the engine?

Q. And who owned that part of the unit?

A. All right, Shelby Motor Car Company of Charleston, Missouri.

A. I did.

Q. When did you buy that?

A. I bought that just prior to the delivery of the trailer.

Q. Where is the bill showing the purchase of that engine?

Mr. ARONOFF. Do you have that?

The WITNESS. I think I have that. By the engine do you mean the tractor?

Mr. WRIGHT. Yes.

The WITNESS. Pardon me just a moment. Unfortunately I haven't the bill, but here is a copy of the contract, and you will note that in this there is one 1934 Ford.

By Mr. WRIGHT:

Q. You did purchase a tractor?

A. I did, and it was so registered with the State of Missouri.

411 Q. And that tractor was purchased prior to the time that the trailer was purchased, which is shown by exhibit No. 1?

A. It was. That is, only a few days prior; I cannot say the exact date.

Q. And you used that truck—you used that tractor in connection with this particular trailer?

A. I did, sir; a 1934 Ford V-8.

Q. In June 1934, or two months later, you purchased another trailer?

A. I did, sir.

Q. And that is described in the bill as a semitrailer. What is the difference between a trailer and a semitrailer?

A. A semitrailer is a trailer that uses—well, I might put it this way, it uses one axle and the front axle rests on the tractor. A trailer is a four-wheeled arrangement.

Q. Did you purchase a tractor about the time that you purchased that semitrailer shown in your exhibit No. 2?

A. I did.

Q. Have you the bill of sale showing the purchase of that tractor?

A. I think this one will cover it. This is the identical tractor.

Q. You are referring now to an insurance policy. I am asking you whether you have the bill of sale showing when you purchased the second tractor?

412 A. I might add this is a contract that is put out by the Universal Credit Company. Naturally I have to have the title in the tractor, the title has to be vested in my name, or I cannot secure any insurance policy on it.

Q. This is just a public liability policy?

A. I beg your pardon, that is not a public liability. That is fire and theft policy.

Q. Oh, I see. You do not have the bill of sale?

A. No; but those bills of sales, certified bills of sale can be furnished by the dealer from whom I purchased the two tractors, namely, the Shelby Motor Car Company of Charleston, Missouri.

Mr. ARONOFF. Pardon me, just a minute. If it is the desire of counsel and the Commission, we might ask leave to file certified copies of those bills of sale within a short time. I did not have them prepared, there was not sufficient time to get them, and that is why they are not here.

Mr. WRIGHT. I notice from the direct testimony, that the only thing which he testified to with respect to the purchase of equipment were these trailers, and I was just wondering how he could run the trailer without a tractor.

Mr. ARONOFF. I think I proceeded to ask him if he bought truck and trailer and his answer was in the affirmative.

Mr. WRIGHT. Yes; but these bills he put in cover only trailers.

413 Mr. ARONOFF. That is correct, and if it is desired by the Commission, I will furnish the bills of sale for the tractors. They were out of St. Louis and I could not get them in time.

Mr. BARR. I am not asking that you furnish any bills of sale here. If he has any competent evidence here that he owns this equipment, that is sufficient for the record, as far as I am concerned.

By Mr. WRIGHT:

Q. In connection with exhibit No. 3, I notice that that covers the purchase of a semitrailer. Did you, at the same time, purchase a tractor?

A. I did.

Q. Have you the bill of sale with you?

A. I have not. I have—

Q. You have answered my question. When you started to operate your first truck, were you then under contract with the Hoffman Freight Lines?

A. The E. H. Hoffman Lines; yes, sir; I was.

Q. Were you under the same contract when you purchased your second and third trailers?

A. I might say with respect to that, that there was supposed to be a little difference here, over the provision there to receive the second unit.

Q. But you were under the same contract?

A. Under the same contract and same basis; yes, sir.

414 Q. Who secured the shippers that used your particular service? Did the Hoffman Freight Lines secure the shippers?

A. Well, if you will note the contracts made there, there is a clause—

Q. I am not interested or inquiring into the contracts here. I am interested in your arrangement with Hoffman.

A. He was supposed to carry insurance on the cargoes and the public liability and p. d.

Q. Did he?

A. At the present time there is a suit pending to establish the fact that he did not.

Q. While you were working for him, were you under the impression, or did you have the understanding with him that he would carry the insurance?

A. I did.

Q. You received all your compensation for your operations prior to July 1, 1935, directly from Hoffman?

A. I did not.

Q. Well, for the work you did for Hoffman?

A. No, sir; I stated in my direct testimony that I hauled for other companies than Hoffman.

Q. Yes; but in the event of any work that you did for Hoffman, you received your compensation from Hoffman?

A. That is right.

Q. Is that right?

415 A. Yes, sir.

Q. Where would you pick up the shipments that you hauled under the Hoffman contract?

A. At the outset of my contract with him, we picked them up at the O'Donnell Teaming Company at 415 South Racine Avenue.

Q. Chicago?

A. Yes, sir; and at other shippers' docks.

Q. Who would direct you to go to those particular docks to secure freight?

A. Either E. H. Hoffman or one of the men in his employ, a dispatcher.

Q. Would you receive a manifest form from Hoffman or his representative?

A. I would.

Q. And then would you take that manifest with you over to the docket, whichever one you had to go to; was that the method, and they would deliver the shipments that you were to haul, upon your presenting the manifest?

A. We would in some instances; yes, sir. That is what you call manifesting the truck before it is loaded. However, in most cases, the manifests were made from the bills of lading after the truck was loaded.

Q. What arrangement did you have with respect to payment for the work you were doing for Hoffman?

A. It was supposed to be settled on a bimonthly basis.

416 Q. Would you retain the manifests that were handed to you?

A. For settlement.

Q. Yes.

A. Yes, sir.

Q. You had no direct dealing with any of the shippers who were using Hoffman, with respect to retaining any portion of the freight charges?

A. No; I did not retain any portion of the freight charges from the customers.

Q. Did you collect any freight on shipments of Hoffman?

A. Yes, sir.

Q. And what did you do with that money?

A. I turned it in to the E. H. Hoffman Lines' office.

Q. Either at Chicago or St. Louis.

A. At Chicago or St. Louis; yes, sir.

Q. Have you a copy of the contract you had with Hoffman?

A. It was an oral contract.

Q. Could you tell us the basis of that contract?

A. The basis of the contract was that I would furnish them a truck at \$60 a round trip, \$30 per trailer load between Chicago and St. Louis.

Q. And your service, as I understand it, was from these docks in Chicago to the docks in St. Louis, or from the St. Louis docks to the Chicago docks?

A. That is right, or from the shippers' docks.

417 Q. Hoffman would, at the terminal point, make arrangements for the pick-up and delivery?

A. Not in all cases. We had to take care of the deliveries and the picking up of the merchandise in many instances ourselves.

Q. Did you receive any extra compensation for that?

A. I did not.

Q. Were those instances where you had a truck load or trailer load?

A. No; partial loads.

Q. Substantial loads?

A. Right.

Q. Now what other concerns, prior to July 1, 1935, did you do work for?

A. Well, such as the Ill-Mo Trucking Service.

Q. The Ill-Mo?

A. Yes.

Q. What kind of a contract did you have with the Ill-Mo?

A. Each manifest, I would say, constituted a contract in itself.

Q. What arrangement did you have with Ill-Mo as a basis for your work?

A. I would usually load dock to dock, what they call a dock to dock load, from their dock in Chicago to their dock in St. Louis, or vice versa, at a stipulated amount per load.

Q. You would furnish the driver in all instances?

418 A. In a lot of cases I did it myself.

Q. Did Hoffman and Ill-Mo at that time operate some of their own trucks?

A. Ill-Mo did, but at that time—

Q. That is prior to July 1, 1935?

A. I might say from the outset of my contract he did not, but he later acquired some units.

Q. Prior to July 1, 1935?

A. I cannot answer on that.

Q. Do you know whether Hoffman has filed an application for rights under the Grandfather clause?

A. I don't know.

Mr. ARONOFF. Just a minute. I do not believe that is at all material in this matter. I do not think he should be required to answer that. It would be purely a conclusion of the witness.

The WITNESS. I know nothing about that.

By Mr. WRIGHT:

Q. And you know nothing about whether the Ill-Mo filed an application either, do you?

A. I do not.

Q. Did you always have a trailer or truck load when you made these trips between Chicago and St. Louis or St. Louis to Chicago?

A. We usually had—well now, by trailer load, just what do you mean by trailer load?

419 Q. Did you always receive \$30 per trip for every trip you made?

A. No; there were some of those trips that were adjusted. We had loads where we did not receive the full amount.

Q. You do not know what Hoffman received from the shippers on any of those particular truck loads, in freight charges?

A. No; I cannot say. I never went into that.

Q. You were more or less on a pure contract basis?

A. I was, you might say, on a contract basis with the various carriers. Each and every trip out constituted a contract in itself.

Q. How frequently, between April, when you got your first trailer, and July 1, 1935, did you make the trip to St. Louis, Missouri?

A. Those trailers were running every day.

Q. Every day?

A. Yes, sir.

Q. And you say that—

A. Pardon me, Sundays. Sundays might be excepted. We usually figured on making three round trips a week. That is six throughs for each trailer, six trips.

Q. Could you give us any idea how many trips you made for Hoffman a week between April and July 1, 1935?

A. No; that is pretty hard to say. I would have to check my manifests in order to answer that question with any accuracy whatsoever. I would say it would be on an average of four trips with each trailer.

Q. You could not have done that, Mr. Baulos, because you only had one truck between April and July 1, 1935.

A. Between April and July 1935, I had three trucks.

Q. Wait a minute. That is right. Between April 1934 and June 1934, could you tell us—

A. The first part of June 1934, I purchased my second equipment—

Q. The first part?

A. The first part. Business was not so hot then and we did not make so many trips. I would say we made on an average of three trips a week. Three trips a week for Hoffman.

Q. For Hoffman?

A. For Hoffman, and then we would get a double load sometimes, running it up to more than three trips a week.

Q. What other carriers did you handle for up to July 1, 1935, besides Hoffman and the Ill-Mo?

A. Hoffman and Ill-Mo. I think those were the two principal carriers.

Q. You do not recall any others now?

A. No; it is rather hard to recall any others right now. I think there might have been a load or two in there for the Decatur Cartage Company; and possibly some from the Transamerican Freight Lines.

421 Q. Between Chicago and St. Louis?

A. That is right, between Chicago and St. Louis.

Q. Did you have that on practically the same basis?

A. Practically the same basis; yes, sir.

Q. Handling their business on practically the same basis?

A. Yes, sir.

Q. Now have you named everybody you handled for prior to July 1, 1935?

A. To the best of my memory.

Q. And there was no one else you hauled for except the trucking carriers prior to July 1, 1935?

A. There was some merchandise, of course, handled on these direct contracts. As I said before in my direct testimony, my trucking was billed on E. H. Hoffman's billing.

Q. Now take this Swift & Company contract, during the time you were hauling for Swift & Company—

A. Yes.

Q. And also Libby, McNeill & Libby, you were shipping through Hoffman and Ill-Mo and the shipments you handled for Libby, McNeill & Libby, and Swift & Company were actually shipments of Hoffman or Ill-Mo, isn't that right?

A. I cannot say that. They were loaded on my trailers and handled by me. However, the billing was through the Hoffman Lines. In many instances you will note the merchandise handled in that kind of contract specified the license numbers 422 of the trailers on which the commodity was loaded.

Q. Yes; but the hauling was all on the billing of the Hoffman and Ill-Mo?

A. Yes.

Q. And you received your compensation from Hoffman and Ill-Mo, did you?

A. That is right.

Q. And Swift & Company paid Hoffman and Ill-Mo for the transportation service that they rendered?

A. That is right.

Q. As I understand it, today you do not have a contract with the Hoffman or Ill-Mo people?

A. No; I do not.

Q. You say you do not have those contracts?

A. I do not have a contract with Hoffman—

Q. With either one of those carriers?

A. No, sir; I do not.

Mr. WRIGHT. That is all I have.

By Mr. SLATER:

Q. You have a very disconnected story here, and I do not believe from the record up to this time, that we can tell the nature of your operations. Let us take the year beginning July 1,

1935, were you employed by anyone employing your individual services, and not as a truck operator?

A. For what time?

Q. Take July 1935, for the first 10 months?

423 A. I was.

Q. Who employed you?

A. E. H. Hoffman Lines first.

Q. What were your duties?

A. Office manager.

Q. What is that?

A. Office manager and despatcher.

Q. And during that period in 1935, were you at the same time engaged in the handling of transportation by motor vehicles owned by you?

A. That is right.

Q. Were those trucks leased to E. H. Hoffman Lines?

A. They were not.

Q. What terms did you have for the use of your equipment by Hoffman?

A. They were contracted to them.

Q. They were what?

A. They were contracted to them.

Q. And were the trucks used exclusively during that period in the handling of freight for E. H. Hoffman Lines?

A. They were not.

Q. Who else used the trucks you owned?

A. Well, TransAmerican and Ill-Mo.

Q. How frequently?

424 A. I cannot say as to the frequency of the operations there, but at frequent intervals.

Q. Who carried the cargo insurance on those trucks at that time?

A. The cargo insurance?

Q. Yes.

A. On the trucks?

Q. No; cargo insurance for the load on the trucks?

A. Whoever was shipping, whether it was Hoffman or Ill-Mo or Decatur Cartage, the deductions of Hoffman and Ill-Mo were always in there and the deductions were made for insurance on those loads.

Q. And in what names, and of what carrier or carriers or agents, were your freight bills issued?

A. The shipping bills?

Q. Your freight bills.

A. Freight bills in the name of the carrier for whom I was hauling.

Q. They were never issued in your name during that period of time?

A. No, sir; they were not.

Q. You made some statement with reference to the approximate partial payment on the amount due on these trucks. Were not a part of these payments made by E. H. Hoffman and charged to your account?

A. I think that is purely a matter with myself. I do not think it is necessary that I answer that, to say how I paid for my trucks or what I have paid for them, for that matter.

Q. You made the statement that you paid direct to the company from whom you purchased these trucks the amounts due as they came due. Was that a true statement or not?

A. The companies from whom I purchased those trucks—

Mr. BARR. I do not think that is pertinent.

The WITNESS. That is out of line entirely.

Mr. BARR. If there is objection to that it will be sustained.

Mr. ARONOFF. I will object to that.

Mr. SLATER. That is all.

Mr. BARR. Is there any further cross examination?

Mr. SLATER. That is all.

Redirect examination by Mr. ARONOFF:

Q. Just one more question. Did you at any time prior to July 1, 1935, register under any code of fair competition?

A. I did, sir.

Q. And do you recall when?

A. I haven't it at hand here. However, it is of record in Washington. I registered two trucks the latter part of 1934.

Q. Where did your registration take place?

A. St. Louis, Missouri, at the Buder Building.

Q. Do you have any evidence of that registration with you?

A. Unfortunately I do not. However, that is on record at Washington because I have received my card.

Mr. ARONOFF. Mr. Commissioner, I would like to ask leave to file a copy of that at a later date. We have been trying to get it for quite some time, and have not been able to get that evidence and I would like to ask leave to file that within the next fifteen days. I believe by that time we can get it.

Mr. BARR. Leave will be given to the applicant to file the—just what is it you are going to file?

Mr. ARONOFF. Evidence of registration under a code of fair competition.

Mr. BARR. Leave granted to file that within fifteen days.

Mr. ARONOFF. That is all.

Mr. BARR. Mr. Baulos, I notice by your application here you have asked for a certificate as a common carrier.

Mr. ARONOFF. That is only as a contract carrier. We are abandoning any efforts to obtain a certificate as a common carrier and only applying as a contract carrier.

Mr. BARR. Do you hold any certificate of public convenience and necessity from the Illinois Commerce Commission, Mr. Baulos?

The WITNESS. I do not.

Mr. BARR. Have you secured your license or permit to enter the city of St. Louis?

The WITNESS. I have not. I hardly thought that necessary to secure, for going into a port of entry. There are many carriers operating in there who do not have them.

Mr. BARR. I understand they have a fee or charge that they make for entering the State of Missouri, and it was suggested that I make that inquiry in view of the fact that the Commissioner, the representative of Missouri was not present today, and he requested that that point be developed in his absence. That was the reason for my asking for the information.

Mr. ARONOFF. I believe you are misinformed on that. I do not know exactly, but I believe that does not apply to the city of St. Louis, for the entry into St. Louis and into Missouri.

Mr. BARR. St. Louis is in the State of Missouri.

Mr. ARONOFF. Well, I have information to the effect that if it is only into the city of St. Louis, they are not required to do that.

Mr. BARR. I am not familiar with their law, but the Commissioner from Iowa suggested to me that the Missouri Commissioners had always requested that that question be asked on their behalf in their absence, so that is the reason I was asking it.

Mr. ARONOFF. That is all, I think, Mr. Baulos.

Mr. BARR. No; just a minute.

By Mr. BARR:

428 Q. What is the nature of your operation from Chicago, Illinois, Aurora, Illinois.

A. What is the nature of it?

Q. Yes.

A. Well, at the time that I asked for the operation between Aurora, Illinois and Chicago, and between Chicago and Aurora

and St. Louis, it was for the hauling of a beer movement, which would naturally mean that I would have to go empty from Chicago to Peoria to pick up beer empties to take them into St. Louis, and in returning to Aurora it might be necessary that I come back into Chicago after unloading.

Q. That would mean the hauling of empty boxes over the highways from Aurora, Illinois into Chicago?

A. That is right.

Q. You are not contemplating picking up any merchandise to haul in from Aurora or from Chicago to Aurora?

A. I am not.

Q. You say intermediate points along these routes. Do you mean the intermediate points from Chicago to St. Louis, that you would be picking up merchandise at any of these intermediate points and hauling to St. Louis, Missouri, or from one intermediate point to another intermediate point?

A. It might be I would pick up merchandise at one intermediate point and haul it to another intermediate point.

Q. Within the state of Illinois?

A. Yes, sir.

429 Q. Which would be intrastate service?

A. Intrastate service; yes, sir. However, there would be other merchandise that would be picked up that would be hauled interstate.

Q. But that would be on separate contracts?

A. That is correct.

Mr. BARR. Off the record.

(Discussion outside the record.)

By Mr. ARONOFF:

Q. Just to clear the record. Mr. Baulos, am I to understand that you at this time do not care for an operation from St. Louis to Aurora and from Aurora to St. Louis and also from Aurora to Chicago and one from Chicago to Aurora?

A. I do not particularly care for that; no, sir.

Q. You do not have that movement under contract at the present time?

A. No, sir; I do not.

Q. And at the time you made the application you did have?

A. There can be possibilities.

Mr. WRIGHT. It was just a possibility at that time? It was not an actuality, was it?

The WITNESS. No, sir.

Mr. WRIGHT. You mean it was not an actuality?

The WITNESS. No, sir; it was not.

Mr. WRIGHT. And as I understand the contract that you
430 had originally and has now expired, that was originally
operated under—

Mr. ARONOFF. There has been no testimony on that. I have
not questioned him about that.

Mr. WRIGHT. Well, all right.

Mr. BARR. Do I understand that you have no operations be-
tween Aurora, Illinois, and St. Louis, Missouri, or you did not
have prior to July 1, 1935?

The WITNESS. I did not.

By Mr. BARR:

Q. You did not?

A. No, sir.

Q. Then you are not claiming the right to a certificate covering
that operation by virtue of the grandfather clause, that is to say,
the operations on route No. 2 as you have described it in your
application, and route No. 3? You are not claiming any rights
under the grandfather clause on those two routes, is that right?

A. I might say it might be well that I ask for operation over
those routes.

Q. You are asking that they be given now, but I am asking you
whether or not you claim any rights under the grandfather clause
of the Act?

A. I do not.

Q. To those two routes?

A. I do not.

431 Mr. ARONOFF. Just one question.

By Mr. ARONOFF:

Q. Before July 1, 1935, were any of your trucks moving between
Aurora, Illinois, and St. Louis, Missouri, as designated by route
No. 2? That is, prior to July 1, 1935?

A. They were not.

Q. They were not?

A. They were not.

Q. Then you understand that you have no grandfather clause
rights for that particular route?

A. That is right.

Q. And you at this time are willing to abandon that route?

A. I am.

Q. Under the grandfather clause?

A. I am.

Mr. BARR. I think that is more confusing.

Mr. ARONOFF. He has made application for it.

Mr. BARR. He did say he was not abandoning his application for a certificate to operate as a contract carrier between Aurora, Illinois, and St. Louis, Missouri, but that he was not claiming that he had any rights under the grandfather clause over that route. Now—

Mr. WRIGHT. I might ask—or pardon me, Mr. Commissioner.

By Mr. BARR:

Q. Now as to route No. 3 between Chicago and Aurora,
432 Illinois, are you asking for a certificate of convenience and necessity to operate as a direct carrier now over that route?

A. A certificate of convenience of necessity?

Q. Yes; to operate as a contract carrier over that route?

A. No; I was asking for a permit to operate over that route.

Q. All right. For a permit to operate over it as a contract carrier?

A. Yes.

Q. From Chicago to Aurora?

A. I have asked for it, but I feel the same way about it as I do about the other.

Q. This route you are requesting that a permit be granted to operate over; what route is it from Chicago?

Mr. ARONOFF. That is route 3.

The WITNESS. Route 3.

By Mr. BARR:

Q. Route 3, Chicago to Aurora?

A. Yes; I am asking that a permit be granted.

Q. But you are not claiming any rights under the grandfather clause?

A. I am not.

Q. And is the operation you are asking for a permit to carry on between Aurora, Illinois, and Chicago, Illinois, purely an intrastate operation?

A. Between Chicago, Illinois—

Q. And Aurora, Illinois?

433 A. No; it was in connection with an interstate movement.

Q. In connection with an interstate movement?

A. Yes, sir.

Q. From Chicago to Aurora to St. Louis?

A. That is right.

434 Mr. WRIGHT. As I understand, he is waiving any claims to such an operation.

The WITNESS. He is claiming no rights under the grandfather clause.

Mr. BARR. He is waiving, Mr. Attorney for the Illinois Central, any claim to a permit or certificate by virtue of the grandfather clause of the Federal Act, but he is requesting that a certificate be granted to him to carry on those operations over these routes, but not by virtue of any right under the grandfather clause. Now, that is as I understand it.

Mr. ARONOFF. Is that your thought, Mr. Baulos?

The WITNESS. No; just a permit.

Mr. BARR. Well, a permit.

By Mr. ARONOFF:

Q. A permit?

A. Yes.

Q. In other words, the Commissioner is distinguishing between rights under the grandfather clause and a permit of convenience and necessity.

A. I am not claiming rights of operation under the grandfather clause over those particular routes that you speak of, Mr. Commissioner.

Mr. WRIGHT. This application, as I understand it, is an application under the grandfather clause; isn't that right?

The WITNESS. Yes, sir.

By Mr. WRIGHT:

435 Q. And that prior to July 1, 1935, your operations were from Chicago to St. Louis and St. Louis to Chicago?

A. Yes.

Q. To Chicago and intermediate points, which would not be from Chicago to intermediate points under the grandfather clause?

A. No.

Q. Because that would be purely intrastate?

A. That is right, but it would be intermediate points interstate if you are operating between Springfield and St. Louis.

Q. Well, I didn't understand that, Mr. Baulos. Prior to July 1, 1935, you said you had certain contracts with Hoffman, Ill-Mo, and perhaps one or two unnamed truck carriers?

A. Yes; and Swift & Company and Libby, McNeill & Libby.

Q. Yes; but those operations were all under your Hoffman or Ill-Mo contracts?

A. That is right.

Q. Now, under those contracts that you had, did you haul between St. Louis and St. Louis and Chicago?

A. I did, and also covered some intermediate points.

Q. Did Hoffman and Ill-Mo arrange to have you pick up shipments out of Springfield for them at St. Louis?

A. I told you in my other testimony they did.

Q. Where did you pick up shipments at Springfield, Illinois?

A. At docks that were rented by Hoffman or by—

Q. Where are those docks?

A. Well, one of them is the Hillyer Storage Company.

436 Q. How many times did you stop at the Hillyer Storage Company to pick up a shipment prior to July 1, 1935?

A. That would be hard for me to say. I cannot answer that.

Q. Was it every trip?

A. No, sir; it was not.

Q. Once a month?

A. Well, it might be twice a week. Maybe I would stop there twice a week, and then maybe I would not be there for two weeks.

Q. Would your records that you have kept show your manifest sheets?

A. They will not. They might in some instances.

Q. What records did you keep which would show exactly what you picked up at these intermediate points on interstate shipments?

A. I have some manifests that would show that.

Q. What other points did you pick up for Hoffman, Ill-Mo, and these other carriers, at intermediate points, to St. Louis?

A. Bloomington, Illinois.

Q. And what other points?

A. Lincoln, Illinois. Those were the principal points, and East St. Louis.

Q. Where did you pick up in Bloomington?

A. Bloomington, Illinois, was picked up at two different concerns there. One of them was the Schroeder Transfer & Storage Company and the other was, I think, Johnson Brothers Transfer.

437 Q. Was this prior to July 1, 1935?

A. It was.

Q. And where did you pick up at Lincoln?

A. The Coogan Transfer & Storage Company.

Q. Now, returning from St. Louis and to Illinois points, where did you stop prior to July 1, 1935?

A. At those same points.

Q. At the same places?

A. At the same places, including the terminal in Chicago.

Q. And all these stops were made under these contracts that you had with Hoffman and Ill-Mo?

A. They were.

Q. Are you now manager of the Overnite Freight Lines, freight service?

A. I am not.

Q. You are operating your own business?

A. I am.

Q. When did you leave—well, what company were you with?

A. Be-Mac Transport Company.

Q. Be-Mac Transport Company?

A. Yes.

Q. And when did you leave them?

A. On the 24th of February.

Q. 1936?

A. Yes, sir.

438 Q. How long were you with them?

A. Two or three months.

Q. Were you with the Overnite?

A. No, sir; I was not.

Q. Do you have any connection with them?

A. I have none whatsoever. I was hauling freight for them under contract the same as for Hoffman and Ill-Mo.

Q. When did you enter into that contract?

A. Some time in February 1936.

Q. That is all.

Redirect examination by Mr. ARONOFF:

Q. Now, Mr. Baulos, as I understand, you are claiming in your application rights under the grandfather clause on shipments between St. Louis and Chicago on the route designated in your testimony, and the intermediate points that you touch in those routes?

A. Yes, sir.

Q. And you include in that Springfield and Decatur? Did you mention those as principal intermediate points?

A. I did.

Q. Now, are we to further understand on this route between Chicago and Aurora and also between Aurora and St. Louis, that you did not haul prior to July 1, 1935?

A. I did not.

Q. And you are not claiming any rights under the grandfather clause on that?

439 A. I am not.

Mr. BARR. You have testified as to two routes between St. Louis and Chicago; one that came up through Decatur and up 45, and the other Springfield, Bloomington, Joliet, and Chicago.

A. Which was U S 66; yes, sir.

By Mr. BARR:

Q. And you had been carrying on operations over those two routes prior to July 1, 1935?

A. Yes, sir; I had.

Q. I notice in the file here that you have not filed with the Interstate Commerce Commission Form MC-3, which is a form

designating your statutory agent for service of processes, and things of that kind—

Mr. ARONOFF. He states . e has not filed that.

Mr. BARR. No; He has not filed that.

Mr. ARONOFF. Then we will have to comply with that. He has one in Illinois and one in Missouri.

Mr. BARR. I do not know just what the form is, but I want you to check it up and see. Evidently you did not or it would have been in the file. The notation I have on your application is to request that you comply with the requirements of BMC-3 and designate your statutory agent.

The WITNESS. On the short form, BMC-A?

Exam. MAIDENS. It is on all forms.

440 Mr. BARR. Mr. Wright, after examining these exhibits here, have you any objection to their admission?

Mr. WRIGHT. No; I have not.

Mr. BARR. Are there any objections?

(No response.)

Mr. BARR. If not, Applicant's Exhibits 1, 2, 3, 4, and 5, will be admitted.

(Applicant's Exhibits 1, 2, 3, 4, and 5, inclusive, Witness Baulos, received in evidence.)

Mr. ARONOFF. That is all.

(Witness excused.)

Mr. ARONOFF. That is our case.

Mr. BARR. Do any of the parties interested as respondents or interveners have any testimony to offer?

Mr. SLATER. Yes; I have.

GEORGE R. GOODE was sworn and testified as follows:

Direct examination by Mr. SLATER:

Q. State your name, please.

A. George R. Goode.

Q. And your present business?

A. President of the Be-Mac Transport Company, Incorporated.

Q. Do they operate between the same points the applicant operates?

A. Yes, sir; between Chicago and St. Louis.

441 Q. Have you any record of the trucks operated by the applicant in this case, the petitioner?

A. Yes, I have.

Q. Proceed in your own way and discuss that matter, please.

A. I have statements of the operation of T. E. Baulos for the E. H. Hoffman Lines during the first eleven months of 1935.

Mr. ARONOFF. Just a moment, may I—well, go ahead.

The WITNESS. It shows that two trucks were in operation during the eleven months. The third truck made its initial trip—

Mr. BARR. What eleven months?

The WITNESS. The first eleven months of 1935. The third truck made its initial operation for E. H. Hoffman Lines from St. Louis to Chicago on July 10th. It shows that E. H. Hoffman Lines purchased with their check No. 7628 license plates for this unit. It shows that on July 31st—

Mr. ARONOFF. Just one minute. I think before any further testimony is given from that statement that they should identify their source of information there and state just where that information was obtained.

By Mr. SLATER:

Q. Where did you obtain this information?

A. This is a duplicate copy of the original records of the E. H. Hoffman Lines.

Q. And did you compare it with the original records to determine its accuracy?

A. I did, sir.

Mr. ARONOFF. I do not think the applicant in this case is bound by copies of the records of E. H. Hoffman Lines produced by this witness, because we could not have any opportunity to cross-examine the person who kept and had charge of those records. You do not have any such representative here with any special representation as to their authenticity or correctness, and I object to any testimony from those records.

Mr. SLATER. Now, if the Commission please, this is not an unusual practice before the Commission. Perhaps it is not as technical as before the courts, but we all know the Commission invariably permits this to be done.

Mr. ARONOFF. Mr. Commissioner, it is not a question of being technical. It is just a question of preserving the applicant's rights. Here are some purported copies of records. Certainly, Mr. Goode could not be examined concerning those copies. He did not keep them. And, how can we by cross-examination determine the nature of those transactions, when the man who is testifying from those records is not in a position to give it? If Mr. Hoffman, or Mr. Hoffman's secretary or the man in charge of those records were here, I would not object because they are not the original records, but I certainly would want them brought in by the man who would be subject to cross-examination, so that my applicant's
443 rights could be protected.

I do not believe that Mr. Goode is the proper man to introduce these records unless he can qualify as one who had charge

of these records and as being the man who was the original keeper of these records.

Mr. BARR. I think the objection is well taken.

Mr. SLATER. If the objection is sustained I will ask leave to send for the man and bring him in here tomorrow with the original records. This has happened before before this Commission, but I am not objecting to the ruling. I am asking, however, gentlemen, for permission to bring the man in with the original records.

Mr. WRIGHT. As I understand it, this witness has checked these records.

Mr. BARR. What is the best evidence?

Mr. WRIGHT. The records are the best evidence, but before the Interstate Commerce Commission it does not require the presentation of the records, and even in the federal courts you are not required to produce voluminous original records.

Mr. BARR. This is off the record.

(Discussion outside the record.)

Mr. BARR. The answers that have been made will be stricken, and no further testimony along that line with reference to the papers he was testifying from will be received as far as E. H.

Hoffman Lines is concerned. Of course, you have a right to go ahead and ask different questions and let them come up in that way and I will rule on them as they come up, but I will say that I will sustain the objection to any testimony on those papers.

By Mr. SLATER:

Q. In your examination of the records of the E. H. Hoffman Lines, was there a truck owned by Mr. Baulos that was used on January 4, 1935, and driven by a man by the name of Bob Roberts?

Mr. ARONOFF. I will object to any testimony from the record of the copies of the E. H. Hoffman Lines by Mr. Goode unless he can be qualified as the man who had charge and knowledge of those records, and kept them. If he can show that I will not object.

By Mr. SLATER:

Q. Did you examine the records of the E. H. Hoffman Lines?

A. Yes, sir.

Q. And from those records did you secure this document I hold in my hand?

A. Yes, sir.

Mr. ARONOFF. May I ask a question about that?

Mr. BARR. Yes.

By Mr. ARONOFF:

Q. Did you take these off yourself?

A. No, sir.

Q. Who gave you these?

A. I do not recall the name of the party that works for
445 Mr. Hoffman.

Q. Did you see him take these off the original records?

A. I even saw the type of records.

Q. Did you see him take these off the original records?

A. They are a duplicate of the originals.

Q. How do you know?

A. I have examined those.

Q. Can you explain these various items on here?

A. Some I can and some I cannot.

Q. Some you can and some you cannot?

A. Yes, sir.

Mr. ARONOFF. My objection still stands.

Mr. BARR. Objection sustained.

Mr. SLATER. Did you object to his answering the last question
also?

Mr. ARONOFF. Yes.

By Mr. SLATER:

Q. Will you examine the documents and tell us what you do
know about them, then, because I myself really don't know.

Mr. BARR. I think the objection has been sustained to any further
examination with regard to the papers purporting to be
copies of the E. H. Hoffman Lines' books.

By Mr. SLATER:

Q. Then I will ask the witness to proceed with his own records
and beginning with the first meeting with Mr. Baulos,
446 explain your first meeting, and give it down to the time he
severed his connections with your company.

A. I first used one of Mr. Baulos' units on a leased car basis
on the 30th of June, 1935. This is a statement of the Be-Mac
Transport Company in confirmation—

Mr. BARR. On what kind of a basis?

The WITNESS. A lease car basis.

Mr. ARONOFF. I think that ought to be explained, Mr. Com-
missioner. It is a rather ambiguous term.

The WITNESS. Shall I explain it?

Mr. BARR. Yes; I would like to know that that is not a con-
clusion.

The WITNESS. We lease only for-hire trucks, in addition to
the equipment we use in our operations. We have no such a thing
as a contract with any carrier, and never did have a contract.
Does that explain your question?

Mr. ARONOFF. No; when you say lease agreement, did you indicate some kind of a lease agreement?

The WITNESS. Yes, sir.

Mr. SLATER. I am going to object to counsel's cross-examination on each of these questions.

Mr. ARONOFF. I have to cross-examine him to see if he is qualified.

Mr. BARR. You can qualify him later.

Mr. ARONOFF. I mentioned a leased agreement and he said that was correct, and I would also like to know—

447 The WITNESS. I said a leased car basis. Do you understand that?

Mr. ARONOFF. I do.

The WITNESS. And we pay a specific amount of money for any individual equipment, for the use of that equipment, to haul our Transport Company's tonnage that we cannot handle with our own equipment.

Mr. BARR. Do you include in that lease the driver?

The WITNESS. No, sir.

Mr. BARR. Do you furnish the driver?

The WITNESS. No, sir; we do not furnish the driver.

Mr. BARR. Does Baulos furnish the equipment and the driver?

The WITNESS. And the driver.

Mr. BARR. Who has control over the goods or merchandise?

The WITNESS. We have complete control over the merchandise.

Mr. BARR. And the direction as to routes?

The WITNESS. Routes, yes, sir; cargo insurance, public liability insurance, and all other expense bills pertaining to the motor truck operation.

By Mr. SLATER:

Q. And in whose name are the receipts for the freight given?

A. Given in the name of the Be-Mac Transport Company.

Q. Go ahead.

448 A. I again was contacted on or about December 1, of 1935, by Mr. Baulos, and found finally at that time that he had severed his connection with the E. H. Hoffman Lines. Mr. Baulos approached me for a position with our company, at which time I employed him as our Chicago manager. Mr. Baulos explained to me at that time that he had three trucks which had been operating for the E. H. Hoffman Lines. He further stated that he believed he would be able to place one of his units in transportation for Swift & Company. He asked me at that time whether or not our line or our company could use, in any way, his other two units. We explained to him—I explained to him that our operation was very well filled, but we would use him occasionally when necessary, if his trucks were available. Mr. Baulos

stayed in the employ of our company up to and including February 24, 1936. Two days prior to receiving Mr. Baulos' resignation I learned that Mr. Baulos—

Mr. ARONOFF. Just a minute. I object to that as hearsay, what he learned. I think that I will object to that so far as what he learned from anybody else.

By Mr. SLATER:

Q. What is the source of that information?

A. My drivers.

Mr. ARONOFF. That is hearsay, and not binding on the applicant. I do not think he should testify to what he heard from a driver.

449 Mr. BARR. I think the objection will be sustained.

The WITNESS. I offer in evidence Mr. Baulos' resignation, dated February 24, 1936, calling attention to and stating that his personal business affairs—

By Mr. SLATER:

Q. Are you reading it now?

A. Yes, sir—require a certain amount of his time.

"Therefore I kindly ask that you accept this as my resignation as manager of your Chicago office, effective at once."

"P. S. Please forward any balance due me on my revenue account, to 1314 W. Jackson Blvd. Chicago, Illinois."

(Intervener's Exhibit 6, Witness Goode, received in evidence.)

The WITNESS. I offer as further evidence statements of Be-Mac Transport Company for the lease of equipment owned by T. E. Baulos during the month of June 1935; November 1935; December 1935; January 1936; February 1936; and some checks signed by either myself or the secretary of our company, in support of checks issued by our company to drivers for T. E. Baulos, and also checks on account paid to T. E. Baulos for the lease of this equipment.

Mr. SLATER. I will offer the statements in evidence, consisting of five sheets. I offer the checks as Exhibit No. 8, consisting of seven checks. I will offer in evidence at this time Exhibit

No. 6.

450 Mr. BARR. Any objection?

Mr. ARONOFF. No objection.

Mr. BARR. It will be admitted.

(Intervener's Exhibit 6, Witness Goode, received in evidence.)

Mr. SLATER. I next offer in evidence Exhibit No. 7, consisting of five sheets.

Mr. BARR. Any objection to Exhibit No. 7?

(No response.)

Mr. BARR. If not, Exhibit No. 7 will be admitted.

(Intervener's Exhibit 7, Witness Goode, received in evidence.)

Mr. SLATER. I now offer in evidence Exhibit No. 8, consisting of seven checks.

Mr. ARONOFF. Before entering this of record I just want to ask one question. Do these constitute all or are there others?

The WITNESS. There are other checks. I did not care to remove from our records all checks.

Mr. ARONOFF. All right.

Mr. BARR. Exhibit No. 8 of the intervening petitioner will be admitted.

(Intervener's Exhibit 8, Witness Goode, received in evidence.)

By Mr. SLATER:

451 Q. Now, you may proceed in your own way with whatever evidence you want to give in reference to this case.

A. There is no evidence I think of.

Mr. SLATER. All right.

Mr. WRIGHT. I would like to ask the witness some questions before you cross-examine.

Mr. ARONOFF. Are you going to cross-examine the witness?

Mr. WRIGHT. No, I am asking—

Mr. ARONOFF. Other questions?

Mr. WRIGHT. Other questions. I will call it direct.

By Mr. WRIGHT:

Q. During the time that Mr. Baulos was working for you was he on your pay roll?

A. Yes, sir.

Q. And did you pay him a salary while on your pay roll?

A. Yes, sir; a weekly salary.

Q. In addition to that you, as I understand your testimony, leased two of his trucks from time to time?

A. Occasionally; yes, sir.

Q. Is that a straight trip basis?

A. Yes, sir.

Q. What was the basis?

A. The basis depended upon what it was he had available. We usually paid him the minimum of \$30 per load from Chicago to St. Louis. If the revenue warranted a higher rate we paid him on a larger basis.

Q. Between some other point than St. Louis?

452 A. No, between Chicago and St. Louis and we also used him between Chicago and Springfield, Missouri.

Q. This \$30 basis, was that on a certain tonnage load?

A. Yes, sir.

Q. Supposing the tonnage did not come up to that minimum or maximum, whatever you want to call it, did he get less than \$30?

A. No, a minimum.

Q. A minimum of \$30?

A. Yes.

Q. Now, if your tonnage exceeded that basic minimum, did he get more than the \$30?

A. Yes.

Q. Did you pay his drivers direct?

A. Not always. Sometimes I did; sometimes the secretary paid them.

Q. What was the reason for the difference in method of payment of his drivers?

A. Do you mean as to my not always paying him or the secretary not always paying him?

Q. What do you mean by secretary?

A. My secretary.

Mr. SLATER. He or the secretary paid them.

Mr. WRIGHT. Oh, I see.

By Mr. WRIGHT:

Q. You paid the drivers who were employed by
453 Mr. Baulos?

A. No.

Q. Who paid his drivers?

A. We merely give the drivers advance money for the purpose of purchasing gasoline or other expenses along the road.

Q. Did you ever pay them their salary?

A. No.

Q. Or any part of their salary?

A. No. The trucks were leased to us with the driver included.

Q. And was Mr. Baulos under the lease required to pay the expense money of the driver on his trip?

A. Yes, he was required to pay that.

Q. You always charged the money you advanced against the credit for the trip he was making?

A. Correct.

Q. During the time that this arrangement was going on, did you pay any of Mr. Baulos' bills for garage, repairs, or anything of that kind, in advance?

A. Not that I recall.

Mr. ARONOFF. Just one minute, to shorten the record and the time here, we are admitting that the various people that had contracts or leases, as he calls them, were advanced money, that they charged it to his particular account. Now, what particular bear-

ing does that have in this particular case on the issue of bona fide operation?

454 Mr. WRIGHT. That satisfies me, so I will not pursue that phase of the thing further.

By Mr. WRIGHT:

Q. During the time you employed Mr. Baulos, did you ever have any conversation with him with respect to whether the basis you were following was the same basis followed with other concerns, such as the E. H. Hoffman Lines or the Ill-Mo?

Mr. ARONOFF. I do not think that is material, Mr. Commissioner, as to what basis other people had. He has testified and is testifying as to his business, and I think his testimony ought to be confined to his own tariffs. I think it is just hearsay, anything else.

Mr. BARR. I think if he had any conversation with Mr. Baulos about these contracts or arrangements with other parties, he may testify to the fact he had such conversations.

The WITNESS. Yes, sir.

By Mr. WRIGHT:

Q. What did he tell you as to the basis he worked under for other people for doing work similar to the work he was doing for your company?

A. He told me that he was receiving \$30 per trip.

Q. And did that apply to the Hoffman and Ill-Mo companies?

A. I did not verify any of the Ill-Mo records.

Q. How about the Hoffman records?

Mr. BARR. Now, you are asking him about conversations with Mr. Baulos. If he had a conversation about the Hoffman
455 basis he may testify what Mr. Baulos said. If your answer is not based on what Mr. Baulos said—

The WITNESS. I will answer that. He told me he was receiving \$30 a trip.

By Mr. SLATER:

Q. And his arrangement with Hoffman was similar to the one he was making with you?

A. Correct.

Q. In your conversation with him, did you and he mention the fact that this was a lease or contract arrangement; that is, a contract for transportation service?

Mr. ARONOFF. Just a minute before you answer that. I think that would be a legal conclusion that the witness is not qualified to testify, as to whether that is a lease or contract or what it is. If there is some written document, produce it.

Mr. BARR. The objection will be sustained to the form of the question.

By Mr. SLATER:

Q. As to the intention of the parties, will you state what the substance of this conversation was in connection with the character of contract that was being made, or agreement, or lease, whatever you want to call it?

A. Nothing was made with regard to a contract. We used Mr. Baulos' equipment when we found it necessary on the same basis as we would use other equipment that was more or less in our service, and that was always on a lease basis.

Mr. SLATER. That is all I have to ask.

456 Cross-examination by Mr. ARONOFF:

Q. Mr. Goode—

A. Yes.

Q. If Mr. Baulos comes to you and gives you one, two or three trucks for service, and you agree with him to pay him \$30 per load for a full load of a certain tonnage, and if you have to advance money for any of his drivers, you charge it to his account, is that true?

A. Right.

Q. And if he has any repairs to any trucks while on the road and you have to pay out money therefor, you charge it to his account?

A. That is correct.

Q. Any money that you advance you charge to his account, is that right?

A. That is right.

Q. When you make the so-called lease agreement, does he have his truck at your disposal every day whenever you want it?

A. No.

Q. He can use it for any other equipment if he wants to?

A. What do you mean?

Q. I mean any other shipment by any other company.

A. Correct.

Q. And that is your idea of a lease agreement?

A. As far as our company is concerned; yes.

457 Q. Would you call it a lease?

A. A lease, during the period of time it is in operation for our company.

Q. That is right. In other words, when he comes to you and you put your merchandise in that truck and it goes to some destination, it is leased to you for that trip?

A. That is correct.

Mr. ARONOFF. No further questions.

Redirect examination by Mr. SLATER:

Q. Just one question. Can you tell us about how many operators are operating between Chicago and St. Louis?

Mr. ARONOFF. Mr. Commissioner, I do not believe that is germane to the issues here.

Mr. SLATER. Never mind. I will let that go. You are not claiming under any grandfather rights. I guess that is all.

By Mr. BARR:

Q. What did you say to Mr. Baulos at the time that you requested the use of his equipment for any particular day?

A. Well, if it was a matter of moving freight from St. Louis to Chicago, and Mr. Baulos was not available, therefore we could not converse with him and his drivers in that particular case, as Mr. Baulos' agent.

As a rule, his drivers when arriving in St. Louis would park at a filling station in St. Louis, and if we had any
458 available merchandise to move, over that which we could move or transport with our own equipment, we would call Mr. Baulos' driver and advise him that we had a load for him.

Q. I mean at the time you made the arrangement with Mr. Baulos for the use of his equipment. Now, certainly, in the beginning your conversation was with Mr. Baulos, was not not?

A. Yes, sir. You want to know about the use of his equipment?

Q. Yes. I want to know the conversation you had with him.

A. The conversation I had with Mr. Baulos at the time was to the extent that I hired him as our Chicago office manager, and that when the opportunity presented itself we would use his equipment for the transportation of surplus merchandise that we could not transport with our own equipment.

Q. Did you pay him a certain sum?

A. A minimum sum.

Mr. ARONOFF. Can I ask one question?

Mr. BARR. Yes.

Recross examination by Mr. ARONOFF:

Q. Here is your Exhibit No. 7; what does that state?

A. Exhibit No. 7, November 30th, S3163, St. Louis to Chicago (part load) \$14.95.

Q. So that occasionally you hired one of his trucks for a part load, is that correct?

A. That is correct.

459 Q. Do you call that a lease?

A. Absolutely.

Mr. ARONOFF. Very well, that is all—or just one further question.

By Mr. ARONOFF:

Q. If you had that part load, could he take other merchandise from another shipper to ship with it?

A. From another shipper?

Q. Yes.

A. No; not from another shipper; he could not. He could take it from another truck line.

Q. Oh, another truck line.

A. Pardon me for correcting you.

Q. I used the wrong term. In other words, he could fill it with freight from another truck line?

A. Yes.

Q. And that, according to you, is a lease agreement?

A. That is correct.

Mr. ARONOFF. That is all.

Redirect examination by Mr. SLATER:

Q. I have one more question. I was going to call Mr. Baulos, but I would like to ask Mr. Goode that same question. I would like to know if this Exhibit No. 7 does correctly state the movement under his contract?

Mr. ARONOFF. We think, in the light of our objection, that we are perfectly willing to have this go in the record.

460 Mr. BARR. If that is true I think you had better put Mr. Baulos on the stand.

Mr. ARONOFF. I said if he wanted to prove up all these the same as he had in here, I would not object to this, if that was the contents of his testimony. I did not know, however, he was going to go into lengthy detail each time.

Mr. BARR. I do not want to admit these into the record without some evidence to show what they are.

Mr. WRIGHT. First, I think, in view of the applicant's agreement that we can stipulate this evidence marked as exhibits may be introduced and made a part of the record, and then we can put him on the stand to make any explanation.

Mr. ARONOFF. No, pardon me; no explanation, because Mr. Goode cannot be cross-examined.

Mr. WRIGHT. I think he can introduce all these statements and he can be cross-examined on them.

Mr. ARONOFF. Then I will allow my objection to stand. I was trying to save time.

Mr. SLATER. If you are going to do that there is no use trying to examine the witness regarding them.

Mr. ARONOFF. Then I will let my objection stand, because I do not think he can talk about Mr. Hoffman's records, and Mr. Baulos could not testify about these, either.

Mr. BARR. Off the record, Mr. Reporter.

(Discussion outside the record.)

461 Mr. ARONOFF. Well, I object because there is no point to it.

Mr. BARR. You are standing by your objection, then?

Mr. ARONOFF. Yes.

Mr. BARR. Off the record.

(Discussion outside the record.)

Mr. SLATER. I want to make this statement on the record. I again offer to produce a witness and the original records if necessary, to show that on these particular dates, January 1, 1935, on the first statement, which is marked "account of truck No. 6," and January 3rd is the next date on the statement, that those were the days the trucks were used belonging to Mr. Baulos, used by E. H. Hoffman Lines, and the same statement as to the statement beginning January 4th, 1935, and which is marked "Account of truck No. 7," and the statement beginning July 5, 1935, and marked "Account of truck No. 13." That is all I wanted to prove, and I will bring the original records and a witness who can testify to them. I think, however, we can stipulate that if you want to, because it can be proven. If there is no objection to that, that can be done.

Mr. ARONOFF. We have already said that we had trucks working for Hoffman. That is already in the record. Now, why bring in these statements?

Mr. BARR. He is entitled to make his showing of proof in what he deems to be the best form.

462 (Discussion outside the record.)

Mr. BARR. Now, what is it you want to have shown? You are making the offer.

Mr. SLATER. I want to have it shown, by putting each one of the dates into the record and having him agree that his truck or trucks were used on those dates by the E. H. Hoffman Lines in transporting freight.

Mr. BARR. I know, but you do not understand me.

Mr. SLATER. Maybe I don't.

Mr. BARR. You have made the offer.

Mr. SLATER. Yes.

Mr. BARR. Now, are you requesting a continuance of this case?

Mr. SLATER. In the event there is objection to it.

Mr. BARR. Of course, there has been objection to it and you want to make the offer.

Mr. SLATER: All right.

Mr. BARR. Now, I am asking you if you are asking that we continue this case so you may have opportunity to bring in witnesses to testify to those facts you have stated in your offer?

Mr. SLATER. That is right.

Mr. ARONOFF. My objection, of course, to that proof is still in the record.

(Further discussion outside the record.)

463 Mr. SLATER. I offer to show by a competent witness the dates that the trucks during the period January 1, 1935, to and including November 1935, operated by Truman E. Baulos, that the daily operation of these trucks under lease or contract, if you want to call it a contract, I call it a lease, with the E. H. Hoffman Lines, was exclusively devoted to that.

Mr. ARONOFF. All right.

Mr. SLATER. I think I have with me a statement which shows the date of payment which indicates the date the truck was sent out on the road. However, I will produce a witness who is qualified to answer directly the questions I will ask as to the movement of these trucks for the E. H. Hoffman Lines.

Mr. BARR. Now, is it impossible for you to have this witness present today?

Mr. SLATER. I will have to put that question to Mr. Goode.

The WITNESS. I don't know about that. Mr. Hoffman has two cases in St. Louis regarding movement between Chicago and St. Louis; two common carriers and two contract carriers, really four cases. It is a muddled up affair and I doubt if the Examiner down there could possibly get through with that case before tomorrow. It may be possible for me to get him on the phone and have him come up here.

Mr. BARR. The reason you did not have him here today was because it was impossible?

The WITNESS: That was the only reason.

464 Mr. BARR. And you were under the impression the testimony you are attempting to offer here would be admissible?

The WITNESS. Yes.

Mr. SLATER. Yes, sir.

Mr. BARR. And you intend to prove by this witness the nature of the agreement or contract had with Baulos for these various operations you claim are shown on his books?

Mr. SLATER. Yes, and by these particular records, that he could not possibly have handled anything for anybody else.

Mr. BARR. I think that is competent evidence.

Mr. ARONOFF. Yes. Now, let us assume they prove that he was hauling from January 1, 1935, and in November 1935. Everything

he hauled from Swift & Company he stated himself was billed through E. H. Hoffman Lines. Now, everything Mr. Hoffman billed I assume is in those records, because they have complete records of all hauling, so what have they proved? Nothing more than what he has already stated.

Mr. BARR. I cannot tell what the witness will testify, anything more than what he has said, and I think that is competent evidence. (Discussion outside the record.)

Mr. SLATER. It is agreed that the information contained in intervening petitioner's Exhibits 9, 10, and 11 for identification may be received in evidence, with the understanding that if Mr. Hoffman were present he would testify that the exhibits marked Intervener's Exhibits 9, 10, and 11, show the dates on which the E. H. Hoffman Lines used the trucks owned by T. E. Baulos.

(Discussion outside the record.)

Mr. ARONOFF. I state that it is acceptable to me that E. H. Hoffman will testify to those dates mentioned in those exhibits, and to the trips to Chicago and to St. Louis, as shown by these exhibits, without objection on my part.

Mr. BARR. The exhibits will be admitted in evidence according to the stipulation.

(Intervener's Exhibits 9, 10, and 11, Witness Goode, received in evidence.)

Mr. ARONOFF. I would like to recall Mr. Baulos.

TRUMAN E. BAULOS, previously sworn, was recalled and testified as follows:

Direct examination by Mr. ARONOFF:

Q. Mr. Baulos, I will show you Intervener's Exhibit 9, and refer to the date of January 2nd, 1935, where it says to St. Louis, and a credit of \$30. Will you look at that exhibit, which is supposed to be for one of your trucks, No. 6, and tell us how many trips were made that month?

A. According to the—

Q. According to the exhibit.

A. 18.

466 Q. 18 trips?

A. Exhibit 9 shows that 18 trips were made to Chicago from St. Louis or from St. Louis to Chicago. Now, get that straight, because these are throughs. In other words, they are half trips. Some people define a trip as a round trip. I say trip means one way of approximately 300 miles.

Q. Now, Mr. Baulos, during the month of January 1935, according to this exhibit, your truck No. 6 made 18 half trips; is that right?

A. 18 through trips.

Q. 18 one-way trips?

A. 18 one-way trips; that is right.

Q. How many trips does one of your trucks ordinarily make during a month?

A. It is possible for a truck to make a round trip each 24 hours, or a through trip each twelve hours, or 30 to 31 trips per month.

Q. Now, do you recall at this time whether during the month of January 1935, you hauled for others besides E. H. Hoffman? Can you recall at this time?

A. I cannot recall that any trips were made for others than Hoffman in that particular month of January 1935. However, there was plenty of time to make other trips.

Q. Now, in the month of February, how many trips did that truck make?

A. 16 throughs or one-way trips.

Q. And in the middle of March—I call your attention to this as a half load.

Mr. SLATER. You can bring that out in your argument.

By Mr. ARONOFF:

Q. How many trips did that truck make in the month of March?

A. 14 one-way trips were made in the month of March, 1935.

Q. Now, skip over—well, why skip. How many in April?

A. 21 throughs or one-way trips were made in the month of April, 1935.

Q. And in May?

A. 10 half trips in the month of May, 1935.

Q. And in June?

A. 12 trips were made in the month of June, 1935.

Q. And in July?

A. 14 one-way trips were made in the month of July.

Mr. ARONOFF. All right. I won't proceed any more with this exhibit. Where are the others?

The WITNESS. Right here.

(The document referred to was passed to Mr. Aronoff.)

By Mr. ARONOFF:

Q. I will show you Exhibit No. 10. That is another truck of yours; is that right?

A. That is right; Truck No. 7.

Q. How many trips did it make in the month of January?

A. 16 one-way trips were made in the month of January.

Q. And as to this truck, how many trips is it possible for this truck to make?

A. It is possible for this truck to make as many as 30 or 31 one-way trips between Chicago and St. Louis, Missouri, in one month.

Q. Now, just examine this exhibit and see if in any one month from January 1935, on through until December 1935, if you had as many as 25 trips in any one month?

A. I can tell you now, I had not.

Q. Just examine it and tell me.

A. Well, 17 half trips or one-way trips, were made in the month of August, with a short transfer load from Morrisonville, Illinois. So one trip was to Morrisonville, which is adjacent to St. Louis. However, I find that in no month did we make as many as 25 one-way trips.

Q. Glancing hurriedly through Intervener's Exhibit 11, did you make as many as 20 trips in any one month? That covers the period from July 1935 to December 1935.

A. I did not.

Q. On Intervener's Exhibit No. 11 you find there no month from July to December in which you made as many as 20 one-way trips for E. H. Hoffman?

A. I do not.

469 Q. And during all the time you hauled for Hoffman and for Be-Mac, did you have control of those operators?

A. I had full control of my drivers at all times.

Q. Did you hire them?

A. I did.

Q. Did you fire them?

A. I did.

Q. And did you arrange for payments to them?

A. I did. I paid every man, deducting whatever charges or moneys advanced by the Hoffman Lines for expenses, were made.

Q. Or the Be-Mac Line?

A. Yes; that is right, or other truck lines, I might say.

Mr. ARONOFF. That is all.

Mr. SLATER. That is all.

(Witness excused.)

Mr. SLATER. I have just one question of one witness, and I am through.

GEORGE R. GOODE, previously sworn, was recalled and testified as follows:

Direct examination by Mr. SLATER:

Q. Speaking of trips, St. Louis, or Chicago to St. Louis, is a trip. Approximately how many trips do your trucks make in a month?

A. Our equipment?

Q. Yes.

470 Mr. ARONOFF. Just a minute. I do not think what he can make with his equipment is binding on what Mr. Baulos can make with his equipment.

Mr. BARR. He is not trying to do that. He is stating his own operations.

The WITNESS. I would say our equipment on all we have, and we have 22 in operation between Chicago and St. Louis, can make eighteen trips a month.

By Mr. SLATER:

Q. Why do they make eighteen trips?

Mr. ARONOFF. I object. The question calls for a conclusion.

Mr. BARR. He may answer.

The WITNESS. It is impossible for any truck line to run to full capacity day and night hauling between Chicago and St. Louis, because there are certain periods of months when there is not enough freight to keep your trucks busy day and night. Therefore, on an average our trucks never make over eighteen trips a month.

By Mr. SLATER:

Q. Is your company a fair average of the others?

A. Yes.

Mr. ARONOFF. And I will note an exception to the ruling.

Mr. SLATER. State the grounds.

Mr. ARONOFF. I did state the grounds and I was overruled, and exception is noted.

471 Mr. SLATER. That is all.

(Witness excused.)

Mr. BARR. Are briefs desired?

Mr. SLATER. Yes, we will ask at this time to file a brief.

(Discussion outside the record.)

Mr. BARR. Briefs will be due on January 2nd, 1937. The hearing is closed.

(At 7:10 P. M., December 1, 1936, hearing closed.)

472-1

Exhibit No. 1

INVOICE

THE HERMAN BODY COMPANY

HERMAN TRAILERS

Salesman's name HJS—Sondag. Your order No. T. E. Baulos. Order date 3/8/35. Invoice date 4/10/34. Motortruck bodies and trailers. Newstead and Clayton Aves., Franklin 5300, Saint Louis. No. 6582.

254 UNITED STATES VS. N. E. ROSENBLUM TRUCK LINES ET AL.

Sold to T. E. BAULOS,

Box 101, Vandalia, Illinois.

Mounted on Ford 1934 Chassis, 131" Wheel Base. Serial No. 33569:

Furnish and Mount 1 Model 421 Trailer and Body.....	\$1,475.00
Less 10%.....	147.50

1,327.50

Body: 18'0" Long, 7'3" Wide Inside, 6'6" High Inside.	
1 Ford 1934 Truck 131" Wheelbase.....	800.00

2,127.50

Round front corners, 1 Side Sliding Door, 2 Rear Doors. All road lights built-in, Step Light, Tail Light, Tire carrier in front of body.	
Less Ford Truck.....	800.00

1,327.50

Trailer: B. K. brakes; 34 x 7 Heavy Duty Firestone Tires; Landing Gear; Parking Brakes; Cab control for B. K. brakes; Lower automatic 5th wheel on 131½" W. B. Ford 1934.

Lettering included: St. Louis Chicago Cartage Co.

Paint: Trailer Chassis Red.

Paint: Body Aluminum *Change color to Yellow.

Delivery promised: March 15th.

Terms.—Down payment \$827.50. Balance in 12 monthly payments of \$129.63 each. Includes fire, theft, and \$50.00 Ded. Col. Ins.

We certify this to be an exact and true copy of the original invoice.

THE HERMAN BODY COMPANY,
H. J. SMITH, Vice Pres.

472-2

Exhibit No. 2

INVOICE

THE HERMAN BODY COMPANY

HERMAN TRAILERS

Salesman's name HJS: Sondag. Order date 5/31/34. Invoice date 6/12/34. Motor Truck Bodies and Trailers. Newstead and Clayton Aves., Franklin 5300, Saint Louis. No. 6933.
Sold to T. E. BAULOS, Vandalia, Illinois.

Mounted on Ford chassis, 131" wheel base; Serial No. 33-502:

Furnish and mount 1 Herman model 421 semi trailer and van body	\$1,325.00
18'0" long, 90" wide, 6'6" high, Bendix brakes, cab controls, supports, parking brakes—supports and parking brakes.....	20.00
Trade-in	215.50
5th wheel mounted, sliding side door and full rear doors.....	25.00
Tire carrier.....	15.00
Lined with celotex and 3-ply veneer.....	180.00
34 x 7 heavy duty dual tires.....	60.00

1,705.00

Trade-in	215.50
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1,489.50

Paint body: Yellow.

Paint chassis: Red.

Lettering: None.

Terms: Deposit—Check \$125.00.

We certify this to be an exact and true copy of the original invoice.

THE HERMAN BODY CO.,
H. J. SMITH, *Vice Pres.*

472-3

Exhibit No. 3

INVOICE

THE HERMAN BODY COMPANY

HERMAN TRAILERS

Salesman's name HJS. Your order No. T. E. Baulos. Order date 6/11/35. Invoice date 6/25/35. Motor truck bodies and trailers. Newstead and Clayton Aves., Franklin 5300, Saint Louis. No. 7967.

Sold to T. E. BAULOS,

Third and Geyer, St. Louis, Mo.

For 401 N. Ogden, Chicago, Ill.

Mounted on 1935 Ford chassis, 131" wheelbase:

Furnish and mount one used Herman model 421 semi-trailer insulated van body—Glenn Stribling job—serial No. 34-662 \$965.00.

18'0" long, 7'3" wide, 6'9" high.

34x7 heavy duty dual tires now on trailer.

Sliding side door.

Lined with celotex and 3-ply veneer.

Tire carrier.

Supports.

5th wheel.

Controls.

Repair side and roof.

Check brakes, lights, and bearings.

Spare wheel (controls, 5th wheel, and one tire not furnished—LJS).

We to pay off trailer serial No. 33-592—\$232.32.

We to pay off trailer serial No. 33-569—\$259.26.

To pay cash \$26.58.

You to furnish fire, theft, and \$100.00 deductible col. ins. and pay \$136.20 per month for 12 months. New mortgage on all

three trailers. When 2 payments of \$136.20 are paid we agree to release trailer serial No. 33-592. When 6 payments of \$136.20 are paid we agree to release trailer No. 33-569. In agreeing of the above price it includes adjustment of trailer but narrow.

We certify this to be an exact and true copy of the original invoice.

THE HERMAN BODY COMPANY,
H. J. SMITH, *Vice Pres.*

472-4

Exhibit No. 4

SWIFT & COMPANY

UNION STOCK YARDS, CHICAGO

STATE OF ILLINOIS,

County of Cook, ss:

C. H. McAuley, being first duly sworn according to law, deposes and says that the attached is a true and correct copy of the original contract, dated September 17, 1934, between T. E. Baulos and Swift and Company, said contract being on file in the offices of said Swift and Company, at Chicago, Illinois, and being in the custody of the Transportation Department of said company, of which affiant is in charge of Motor Truck Transportation.

C. H. McAULEY.

Subscribed and sworn to before me this 19th day of Nov. 1935.

ELMER J. NELSON,
Notary Public.

472-5

TRUCKING AGREEMENT

This Agreement, entered into this 17th day of September, A. D. 1934, between Swift & Company, a corporation, hereinafter designated as "Shipper," and T. E. Baulos (American Annex Hotel, 6th & Market Sts.), of St. Louis, Missouri, hereinafter designated as "Carrier," witnesseth:

That, Whereas, the Carrier is engaged in the transportation of freight by motor truck or horse-drawn vehicles and desires to transport such goods of the Shipper as are offered to Carrier, and to facilitate such transportation and for the convenience in handling such transactions and agreeing to the terms and conditions of such transportation, the parties have agreed to the terms and conditions under which all of such transportation shall be made as hereinafter set forth.

Now, therefore, in consideration of the premises and the mutual premises and conditions herein contained, it is hereby agreed as follows:

Terms and Conditions

1. General provisions:

(a) All goods, wares, livestock, and/or equipment handled by Carrier for Shipper or for any of Shipper's subsidiary companies during the life of this contract shall be covered by the terms and conditions of this contract without any such designation that they are to be so covered, and it is understood and agreed that in each instance where the word "Shipper" is used in this contract, it shall be construed, in connection with each piece of goods transported, to mean Shipper or any of its subsidiary companies, as the case may be.

(b) This agreement shall not be altered except in writing endorsed hereon and signed by both parties.

(c) This contract cancels and supplants any and all other written or oral agreements and understandings for trucking between Carrier on the one hand and Shipper, or its subsidiary companies, on the other hand, and said contract shall remain in full force and effect from September 17, 1934, until cancelled by either party by giving written notice to that effect, of at least fifteen (15) days.

(d) It is to be clearly understood and it is the intention of the parties hereto that Carrier shall employ all persons operating trucks hereunder and that such persons shall be and remain the employees of Carrier, and that the Carrier shall be an independent contractor and nothing herein contained shall be construed to be inconsistent with that relationship or status.

(e) It is further agreed by the parties hereto that Carrier is not to display the name of Shipper upon or about any of the Carrier's vehicles without Shipper's written consent.

(f) Carrier agrees to receive from Shipper such quantities of Shipper's goods as may be tendered Carrier for transportation from time to time, that each and every shipment of Shipper's goods received by Carrier, either from Shipper direct or from a third person, firm, or corporation, shall be transported by Carrier under the terms and conditions of this contract, it being herein expressly agreed by the Carrier that the terms of this contract shall be incorporated by reference into each and every such contract of transportation or shipment by the acceptance by Carrier of the goods of the Shipper and/or issuance of receipt therefor, either to Shipper or to the third persons.

2. Receipts for Goods:

(a) Carrier agrees, upon receipt from Shipper of such quantities of Shipper's goods as may be tendered Carrier from time to time by Shipper, to give Shipper a written receipt therefor, which shall be prima facie evidence of receipt of such goods in good order and condition unless otherwise noted upon the face of said receipt.

(b) Carrier further agrees that as to goods of Shipper received from time to time from third persons for transportation for Shipper, Carrier will give said third persons a written receipt for all such goods so received, which receipt shall be prima facie evidence of the receipt of such goods by Carrier in good order and condition unless otherwise noted on the face of said receipt.

(c) Carrier agrees to take signed receipts upon forms satisfactory to Shipper from all persons to whom deliveries shall be made which receipts shall be retained by the Carrier for at least two (2) years and shall be available for inspection and use of Shipper.

3. Deliveries of Goods:

Carrier agrees, upon receipt of the goods of the Shipper, whether direct from Shipper or from third persons, to transport and carry such goods without delay and deliver them in like good order and condition to the consignees at the destinations directed by Shipper.

4. Care and Custody of Merchandise:

(a) Carrier whether a common, contract, or private carrier hereby assumes the liability of an insurer of the prompt and safe transportation of all goods entrusted to its care, and shall be responsible to Shipper for all loss or damage of whatsoever kind and nature and howsoever caused to any and all goods entrusted to Carrier hereunder occurring, while same remains in the care, custody, or control of Carrier or to any other person to whom the Carrier may have entrusted said goods and before said goods are delivered as herein provided or returned to Shipper.

(b) It is expressly understood by Carrier that perishable freight may be tendered to it by Shipper and that the foregoing liability of Carrier, as an insurer, extends to perishable as well as other goods.

5. Collections:

Carrier agrees to collect, on delivery to consignee, for all C. O. D. shipments in cash, unless otherwise instructed by Shipper and further agrees to keep separate and apart from other monies all such collections and turn them over promptly to Shipper.

6. Notification of Accidents:

Carrier agrees to telephone or telegraph Shipper of all accidents where accident impairs the safety of or materially delays delivery of the goods, wares, livestock or equipment, and also agrees to use utmost care and due diligence in the protection of said goods, wares, livestock or equipment.

7. Insurance:

(a) Carrier hereby authorizes Shipper and Shipper agrees to procure and keep in full force and effect during the life of this contract, for the protection of both Carrier and Shipper, insurance against loss of or damage to goods for which the Carrier is liable under the provisions of this contract and for losses under paragraph 5 hereof; all such insurance to be without recourse against Carrier, except as to losses resulting from dishonesty of Carrier or of Carrier's employees or Carrier's agents, and/or of the breach of any provisions of this contract.

(b) Carrier also authorizes Shipper to procure and keep in full force and effect during the life of this contract for the sole protection of Shipper, public liability and property damage insurance on all of Carrier's vehicles used by Carrier and Carrier's agents and employees in the transportation of goods under this contract, said insurance to be carried in a reliable insurance company and to insure Shipper against liability for personal injury or death at not less than Twenty-five Thousand Dollars (\$25,000.00) for one person and Fifty Thousand Dollars (\$50,000.00) for more than one person in any one accident, and against liability for property damage at not less than Five Thousand Dollars (\$5,000.00) for any one accident.

(c) Carrier agrees to stand the expense of such insurance to the extent of one and one-half per cent ($1\frac{1}{2}\%$) of the compensation earned under this contract and Shipper and/or Shipper's subsidiary companies, are hereby authorized to deduct such amounts in remitting to Carrier. If for any reason Shipper is unable to procure such insurance or continue the same in force, it shall have the right to cancel and terminate this contract upon fifteen (15) days' written notice.

8. Assignments:

This contract cannot be assigned by Carrier without the written consent of Shipper.

9. Compensation:

Shipper agrees to pay carrier as full compensation for services to be performed by carrier on the premises herein made by carrier at the rates set forth in the schedule of rates and charges attached

hereto and made a part hereof and marked Exhibit "A."

In witness whereof, the parties have hereto signed this agreement this 17th day of September A. D. 1934.

T. E. BAULOS,

To be signed by Carrier or its authorized agent.

SWIFT & COMPANY,

Per C. H. McAULEY,

To be signed by Shipper or its authorized agent.

Witnesses:

E. E. TATE.

E. L. GRAHAM.

472-7

Exhibit "A"

Between Chicago, Illinois, and adjacent points taking Chicago rail rates and Kansas City, Missouri and Kansas, St. Joseph and South St. Joseph, Missouri, Omaha and South Omaha, Nebraska, Sioux City and Des Moines, Iowa, and St. Louis, Missouri, also between Kansas City, Kansas, and St. Louis, Missouri, East St. Louis, Ill., between Kansas City, Missouri, and East St. Louis, Illinois, and between South St. Joseph, St. Joseph, Missouri, and East St. Louis, Ill., between South St. Joseph, Mo.—Kansas City, Kansas, and So. Omaha, Neb., truck load shipments, minimum 15,000# (but not more than 90% of the carrying capacity of the vehicle) of products and supplies, etc., as listed below:

Fresh meats.

Packing house products—edible and inedible.

Lard and shortening.

Lard compound and substitutes.

Cheese.

Butter.

Eggs.

Dressed poultry.

Soap, soap powder, washing compounds, soda and alkali products, etc.

Oleomargarine.

Abrasive cloth or paper.

Acids.

Advertising matter.

Animal and poultry food.

Anti-freezing compound.

Asbestos articles, cement, insulating material, etc.

Asphalt, tar, etc.

Automobile and truck parts, tires and accessories.

- Bats, cloth, paper, burlap, etc.
- Barrels, kits, tubs, vats, etc., empty with or without covers.
- Belting, rubber, leather, etc.
- Board, wall, pulp, straw, etc.
- Boilers, cooking.
- Bones, hoofs and horns.
- Bottle caps.
- Bouillon cubes.
- Boxes, wood, fibre board, etc., empty with or without covers.
- Brass and copper articles.
- Brooms and brushes.
- Butter color.
- Butter, peanut.
- 472-8 Cables.
- Can stock or pail stock, tin.
- Canned goods in tin, glass or earthenware.
- Cans and covers, milk, cream and ice cream, etc.
- Canvas.
- Carriers or conveyors.
- Cartons, fibre, pulp board, corrugated, paper, etc.
- Cattle tails and switches.
- Cellophane.
- Chain.
- Chemicals.
- Clasps and fasteners.
- Clothing.
- Cooperage, cooperage stock, bungs, plugs, etc.
- Coops, chicken.
- Cord, Twine and rope.
- Cotton piece goods, sheeting, cheesecloth, drill, stockinette tubing, etc.
- Covers, burlap.
- Crayons.
- Cylinders or drums, iron or steel.
- Egg cases, egg case material, fillers, flats, etc.
- Electrical motors, dynamos, machinery, appliances, including parts thereof.
- Extracts, beef, or flavoring.
- Feed, animal or poultry.
- Fertilizer and fertilizer materials.
- Food curing, seasoning or preserving compounds.
- Formaldehyde.
- Furniture.
- Gases, anhydrous ammonia, hydrogen, oxygen, etc.

Gelatin.

Glands.

Glassware, bottles, jars, caps, etc.

Glue, solid or liquid.

Glue stock.

Glycerine.

Greases, bone, garbage, wool or Degras, tallow and stearine.

Grindstones.

Hair and bristles.

Hardware.

Hides, pelts, skins and trimmings.

Ice cream freezers and cabinets.

Insulating material.

Iron and steel articles.

472-9 Labels and tags.

Lime and cement.

Lumber.

Machines, machinery, boilers and parts thereof.

Meat boxes, empty.

Meal.

Milk (fresh), buttermilk, liquid or otherwise.

Minerals.

Mince meat.

Moulds and forms.

Oil foots, sediment and soap stock.

Oils, oleo, cooking, vegetable, peanut, lard, neatsfoot, tallow
etc.

Paints, varnishes, etc.

Paper and paper articles.

Pickles, relishes and condiments.

Pipe, iron, steel, brass, etc.

Premiums.

Railway material and supplies.

Rubber hose and rubber articles.

Salad dressing and oils.

Salt.

Sandwich spreads.

Scales and parts.

Signs of all kinds.

Skewers and gambrels.

Sodium products, Nitrate of Soda, Nitrite of Soda, Soda Ash,
Sulphate of Soda, etc.

Solder.

Spices.

Stationery and office supplies.

Strainers, milk, cream, etc.

Sugar.

Sulphur.

Table sauces.

Thermometers.

Tin and tinware.

Tools.

Troughs, feeding.

Trucks, hand.

Vinegar.

Waste, wax, wire, wool, and other products and supplies shipped
by Packing Houses.

472-10 Minimum rates between Chicago, Illinois, and Kansas City, Kan.-Mo., St. Joseph and South St. Joseph, Missouri, South Omaha, and Omaha, Ne- braska. Sioux City, Iowa-----	32¢ per 100 pounds
And Des Moines, Iowa-----	25¢ per 100 pounds
And St. Louis, Mo.-----	20¢ per 100 pounds
Between Kansas City, Kansas, and St. Louis, Mo., and East St. Louis, Ill., between Kansas City, Missouri, and East St. Louis, Ill., between St. Joseph and South St. Joseph, Missouri, and East St. Louis, Ill.—Rate-----	25¢ per 100 pounds
Between Kansas City, Kan.-So. St. Joseph, Mo., and So. Omaha, Neb.-----	20¢ per 100 pounds
Between Omaha-So. Omaha, Neb., and Sioux City, Ia.---	10¢ per 100 pounds
	15,000 pounds or over.
	15¢ per 100 pounds
	under 15,000 pounds

The rates shown include the cost of refrigeration and permit the deduction of $1\frac{1}{2}\%$ of the freight charges to cover the cost of cargo insurance furnished by the shipper. The trucker will stow into and discharge freight from his truck. In the case of bulk commodities such as hides, dry salt meats and S. P. meats, the freight charges will be assessed on invoice weight. Meat hooks, meat racks, etc., will be considered as part of the truck equipment and trucker shall return them to owner. Trucker may make delivery to one or more consignees in the same or adjacent towns or cities. Rates will apply to and from intermediate points, on straight or joint loads. Part loads may be dumped or picked up at intermediate points enroute at 5¢ per hundred additional. When articles listed herein are offered by the shipper in excess of the truck's carrying capacity such excess may be handled by the trucking company on another truck or other trucks, charged for at the actual weight at truck load rates.

472-11

Exhibit No. 5

This Agreement, Made and entered into this 5th day of March A. D. 1935, by and between Libby, McNeill & Libby, a corporation,

a party of the first part, hereinafter designated as Shipper, and T. E. Baulos, % American Annex Hotel 6th and Market Street, of St. Louis, Mo., party of the second part, hereinafter designated as Carrier, witnesseth:

Whereas, The Carrier is engaged in the transportation of freight by motor truck or horse-drawn vehicle and desires to transport such goods of the Shipper as are offered to Carrier, and to facilitate such transportation and for the convenience in handling such transactions and agreeing to the terms and conditions of such transportation, the parties have agreed to the terms and conditions under which all of such transportation shall be made.

Now, Therefore, In consideration of the premises and the mutual premises and conditions herein contained, it is hereby agreed as follows:

1. Carrier agrees to receive from Shipper such quantities of Shipper's goods as may be tendered Carrier for transportation from time to time. That each and every such shipment of Shipper's goods received by Carrier, either from Shipper direct or from a third person, firm, or corporation, shall be transported by Carrier under the terms and conditions of this contract, it being herein expressly agreed by the Carrier that the terms of this contract shall be incorporated by reference into each and every such contract of transportation or shipment by the acceptance by the Carrier of the goods of the Shipper and/or the issuance of a receipt therefor either to the Shipper or to third parties.

2. Carrier agrees upon receipt from Shipper of such quantities of Shipper's goods, as may be tendered Carrier from time to time by Shipper, to give Shipper a written receipt therefor which shall be prima facie evidence of the receipt of such goods in good order and condition unless otherwise noted on the face of said receipt.

3. Carrier further agrees, that as to goods of Shipper received from time to time from third parties for transportation for Shipper, that Carrier will give said third party a written receipt for all such goods so received, which receipt shall be prima facie evidence of the receipt of such goods by Carrier in good order and condition unless otherwise noted on the face of said receipt.

4. Carrier agrees, upon the receipt of the goods of the Shipper, whether direct from Shipper or from third parties, to transport and carry said goods without delay and deliver them in like good order and condition to the consignee at the destination directed by Shipper.

5. Carrier agrees that in the transportation of any of the goods of the Shipper it will assume and does hereby assume the liability of an interstate common carrier by rail, such liability to exist from

the time of the receipt of any of said goods by Carrier until proper delivery has been made.

6. Carrier agrees to collect in cash or by certified check for all "C. O. D. currency shipments" and in cash or by check for all other C. O. D. shipments on delivery of such shipments to the consignee, and all moneys or checks collected, whether on C. O. D. shipments or otherwise, shall be kept separate and apart from other moneys and turned over promptly to Shipper, but in no event later than the following day, Carrier assuming the risk of loss, burglary, theft, and holdup.

7. Carrier agrees to indemnify and save harmless Shipper from any and all claims for death or injury to person and/or loss of or damage to property, of any nature whatsoever, growing out of or in any way arising from the transportation by Carrier of the goods of Shipper.

8. Compensation:

Shipper agrees to pay carrier as full compensation for services to be performed by carrier on the premises herein made by carrier at the rates set forth in the schedule of rates and charges attached hereto and made a part hereof and marked Exhibit "A."

9. It is the intention of the parties hereto that Carrier shall be and remain an independent contractor, and nothing herein contained shall be construed to be inconsistent with the relationship.

10. This agreement cannot be altered, except in writing endorsed hereon and signed by both parties.

11. This agreement may be terminated by either party giving the other party written notice to that effect.

In Witness Whereof, The parties have hereunto set their hands and seals the day and year first above written.

LIBBY, McNEILL & LIBBY,

By A. W. BANKERT,

Assistant Traffic Manager.

By T. E. BANLOS.

472-12

Exhibit A

Rates on food products consisting of canned or preserved food stuffs and other articles of the following description packed in glass or in tin, in boxes or crates, or in bulk in wood.

Meats, with or without vegetable ingredients including mince meat, pork and beans and soups.

Fruit, fruit butter, fruit jam, fruit jellies, fruit juices, puddings, peanut butter.

Milk, condensed, evaporated or powdered in tin or wood.

Vegetables, vegetable juices, sauer kraut, sauer kraut juice, fish, pickles, olives, table sauces including catsup, chili sauce, prepared mustard, salad dressing, spaghetti.

Between

Chicago also Blue Island, Ill. and St. Louis, Mo. (A. Q.)	20c cwt.
Morrison, Ill. and St. Louis, Mo. (A. Q.)	25c cwt.
Eureka, Morton, also Washington, Ill. and St. Louis, Mo. (20,000 Min.)	17c cwt.

Rate

Lard Pails and or Covers—any quantity	20c cwt.
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Between

Chicago, Ill. and St. Louis, Mo.

472-14

Exhibit No. 6

BE-MAC TRANSPORT CO., INC.

General Offices, 12th and O'Fallon Streets, St. Louis, Mo., Chesnut 2350-2351-2352. Boston Office, 195 Northern Ave., Liberty 9272. Oklahoma City, 1308 W. Reno, Telephone 3-1919. Chicago Office, 3850 W. Taylor, Nevada 6270-6271.

FEB. 24, 1936.

Attention Mr. George Goode

BE-MAC TRANSPORT COMPANY, INC.,

12th and O'Fallon Streets, St. Louis, Mo.,

DEAR SIR: My personal business affairs require a certain amount of my time. Therefore I kindly ask that you accept this as my resignation as manager of your Chicago office, effective at once.

I am having Ed Hynes make up my final cash report ending Feb. 24th showing receipts and expenditures to date.

With kindest regards to you and your organization, I am

Yours very truly,

T. E. BAULOS.
T. E. Baulos.

TEB/teb.

P. S.—Please forward any balance due me on my revenue account, to 1314 W. Jackson Blvd., Chicago, Illinois.

Refrigerator and general service to Chicago, Milwaukee, Cleveland, New York, Philadelphia, Boston, Oklahoma City, Tulsa, and Texas points.

472-15

Exhibit No. 7

Statement No. 553X

BE-MAC TRANSPORT CO., INC.

ST. LOUIS, MISSOURI

BAULOS, T. E.

Date June 1 to 30, 1935.

Date	Ref.	Description	Charges	Credits
June 30	V3725	Balance Due		
30	S1574	Chicago to St. Louis	\$30.00	\$25.48
30	J162	Comm.		3.52
			30.00	30.00

472-16

Statement No. 1139X

Date November.

Date	Ref.	Description	Charges	Credits
Nov. 30	S3163	St. Louis to Chicago		\$14.95
		(Part load)		14.95

472-17

Statement No. 1143X

Date December.

Date	Ref.	Description	Charges	Credits
Dec. 1		Balance brought forward	*****	\$14.95
1	V5092	Exp. to Chicago	15.00	
1	S3200	St. Louis to Chicago		13.67
2	S3174	St. Louis to Chi. 11/30		1.46
12	V6080	Advance to L. Brown	15.00	
15	V6138	Payment of Nov. earnings of truck	14.95	
23	J254	Travel order 12-22-35	4.50	
23	J255	Tel. 150	.36	
11	S3243	Anomasa to St. Louis		51.14
21	S10325	Chicago to Sprfld. Mo.		76.10
15	S3273	Ferry Iowa to St. Louis		47.21
24	S10352	Chicago to St. Louis		21.78
31	J290	Advance Script 10425	25.00	
31	"	Pick up C3379	11	
31	J270	C3405	50	
			75.42	226.31
		December 31 Balance		150.89

268 UNITED STATES VS. N. E. ROSENBLUM TRUCK LINES ET AL.

472-18

Statement No. 1267X

Date January 1936.

Date	Reference	Description	Charges	Credits
Jan. 2	1143X	Balance brought forward		150.89
4	V6437	Ck. on account	151.39	
16	V6649	T-A 155	15.00	
18	V6689	Exp. to Sprg. Mo. (Brown)	10.00	
19	810389	Chicago to St. Louis		43.98
19	C1	Chicago to St. Louis to Springfield (Brown)		76.10
23	J300	Advance at Chicago 1/17/36	15.00	
27	CR136	Cash collected by driver C4250	7.98	
30	J304	C4250		7.98
31	J308	Travel order 308225	4.50	
23	C24	Chicago to St. Louis		30.00
25	C35	Chicago to St. Louis		20.00
31	J314	Advance Chi. 1/23 Durant	15.00	
	J314	Advance Chi. 1/25 J. West	20.00	
			238.87	328.95
				238.87
		January 31 balance		90.08

472-19

Statement No. 1510X

Date February 1936.

Date	Reference	Description	Charges	Credits
Feb. 10	1267X	Balance brought forward		90.08
10	V7064	Ck. to Baggett	15.00	
10	V7072	Exp. to Chicago-Brown	10.00	
10	8185	St. Louis to Chicago		23.65
5	8161	St. Louis to Chicago		28.00
10	8187	St. Louis to Chicago		28.50
10	CR142	Error rate C4254	25	
13	CR144	Error rate C4896	53	
13	V7141	Ck. on account	200.00	
6	C1528	Chicago to St. Louis Brown		37.56
8	C1538	Chicago to St. Louis (BROWN)		34.11
9	C1541	Chicago to St. L. Baggett		36.06
15	C73	Chgo. to St. Louis		50.37
17	V7210	Ck. to L. Brown	5.00	
18	V7222	Ck. to driver	35.00	
19	V7255	Exp. to Chicago	10.00	
20	J335	Advance Chg. 2/6/ (Brown)	25.00	
	J335	Advance Chg. 2/15 (Brown)	25.00	
19	8217	St. Louis to Chicago		34.41
24	V7335	accordance with Tel. & Tel.	13.16	
29	J345	S4263	1.00	
24	Cr148	Claim #10	4.81	
29	C125	Chgo. to St. L.		45.14
29	J356	Advance Chicago 2/29	15.00	
	J356	Shortage in P. C	24.47	
			384.32	407.87
				384.32
		February 29 Balance		23.55

472-20 Voucher No. 7210. Treasury No. 7210. \$5.00.

St. Louis, Mo. Feb. 17, 1936.

Pay to the order of L. Brown, Be-Mac, 5 dol's 00 cts.

HELEN McMANUS.

Sec'y.-Treas.

- To Cass Bank & Trust Co. of Saint Louis,
 472-21 L. Brown, A. B. Nickel.
 Collopy Oil Co., Watson & Grant Rds., Webster Groves,
 Mo.
- 472-22 Voucher No. 7222. Treasury No. 7222. \$35.00.
 ST. LOUIS, MO., *Feb. 18, 1936.*
 Pay to the order of L. Brown, Be-Mac, 35 dol's 00 cts.
 HELEN McMANUS,
Sec'y.-Treas.
- To Cass Bank & Trust Co. of Saint Louis,
 472-23 L. Brown. Pay to the order of The Manchester Bank,
 Phil's Lunch Room No. 2.
- 472-24 Voucher No. 7064. \$15.00.
 ST. LOUIS, MO., *February 10, 1936.*
 Pay to the order of Jack Baggett, Be-Mac, 15 dol's 00 cts.
 HELEN McMANUS,
Sec'y.-Treas.
- To Cass Bank & Trust Co. of Saint Louis,
 472-25 Jack Baggett. Phil's Lunch Room, 1005 S. Broadway,
 St. Louis, Mo.
- 472-26 Voucher No. 6689. \$10.00.
 ST. LOUIS, MO., *January 18, 1936.*
 Pay to the order of Leonard Brown the sum 10 dol's 00 cts.
 GEORGE L. GOODE,
President.
- To Cass Bank & Trust Co. of Saint Louis,
 472-27 Leonard Brown.
- 472-28 Voucher No. 6437. Treasury No. 6437. \$151.39.
 ST. LOUIS, MO., *Jan. 4, 1936.*
 Pay to the order of T. E. Baulos the sum 151 dol's 39 cts.
 HELEN McMANUS,
Sec'y.-Treas.
- To Cass Bank & Trust Co. of Saint Louis,
 472-29 T. E. Baulos.
- 472-30 Voucher No. 7072. Treasury No. 7072. \$10.00.
 ST. LOUIS, MO., *Feb. 10, 1936.*
 To Cass Bank & Trust Co. of Saint Louis.
 Pay to the order of L. Brown, Be-Mac, 10 dol's 00 cts.
 HELEN McMANUS,
Sec'y.-Treas.
- 472-31 L. Brown, Jack West, S. J. Allgers. Pay to the order
 of First National Bank, St. Louis, Mo. International Har-
 vester Co., assignee of International Harvester Company of
 America.

270 UNITED STATES VS. N. E. ROSENBLUM TRUCK LINES ET AL.

472-32 Voucher No. 7141. Treasury No. 7141. \$200.00.

St. Louis, Mo., Feb. 13, 1936.

To Cass Bank & Trust Co. of Saint Louis.

Pay to the order of Mr. T. E. Baulos, Be-Mac, 200 dol's 00 cts.

HELEN McMANUS.

Sec'y-Treas.

472-33 T. E. Baulos.

472-34 Exhibit 9

STATEMENT OF T. E. BAULOS

ACCOUNT OF TRUCK #6

Month of January 1935

1935	Items	Debits	Credits
1/1	Credit Balance from Dec. a/c		\$229.65
1/3	Ck. 4928—Jack West	\$3.00	
1/5	Ck. 4967—Jack West	5.00	
1/8	Ck. 4985—Bdwy. Serv. Sta	19.13	
1/8	Ck. 4998—Jack West	8.00	
1/9	Ck. 5005—T. E. Baulos	100.00	
1/12	Ck. 5052—Jack West	6.00	
1/12	Cash St.—L. Jack West	2.00	
1/15	Ck. 5064—Edwy Serv Sta	14.70	
1/15	Ck. 5066—H. Kogen	23.36	
1/18	City Ice & Fuel 600 Ice 25 Salt 19	1.90	
1/18	Ck. 5113—Bell Tire Co. 2 Tires & Tubes	56.00	
1/18	Ck. 5114—Jack West	6.00	
1/19	Ck. 5126—H. Kogen	15.36	
1/18	Telegram From Chgo to Jack West	53	
1/25	Dely charge 21125 Deld. to Hiller instead of Decatur	26	
1/17	600 Ice 90 Salt 24902-3-4-5	2.25	
1/22	Ck. 5152—Bdwy. Serv. Sta	14.33	
1/22	Ck. 5153—Jack West	6.00	
1/23	Ck. 5170—Jack West	18.00	
1/24	Ck. 5181—Jack West	12.50	
1/26	Ck. 5207—Jack West	6.00	
1/28	Ck. 5213—Bdy. Serv. Sta	9.62	
1/28	Ck. 5219—H. Kogen	14.24	
1/28	Ck. 5221—Jack West	2.00	
2/1	Ck. 5247—H. Kogen	15.00	
2/1	Ck. 5265—J. W. Gray Gas	7.20	
1/31	Check Charge Jan	2.00	
1/31	600 Ice, Salt 60, 10 Racks—26209	2.50	
1/31	Ck. 5273—Dft. 92	10.00	
1/31	Ck. 5273—H. Kogen	13.60	
1/31	Ck. 5285—Bdwy Serv Sta	1.42	
1/28	Ck. 5320—Bob Roberts for Licenses	25.00	
2/1	Credit Bal. To Feb. Acct	329.75	
1/2	To St. Louis		30.00
1/3	To Chicago		30.00
1/4	To St. Louis		30.00
1/5	To Chicago		30.00
1/9	To St. Louis		30.00
1/9	To Chicago		30.00
1/10	To Harrisburg		30.00
1/12	To Chicago		15.00
472-35 1/15	To St. Louis		30.00
1/16	To Chicago		30.00
1/17	To St. Louis		30.00
1/18	To Chicago		30.00
1/21	To St. Louis		30.00
1/24	To Chicago		30.00
1/25	To St. Louis		30.00
1/28	To Chicago		30.00
1/29	To St. Louis		30.00
1/31	To Chicago		30.00
	Total	754.65	754.65

472-36

STATEMENT OF T. E. BAULOS

ACCOUNT OF TRUCK #2

Month of February 1935

1935	Items	Debits	Credits
2/1	Credit Balance from Jan a/c		\$329.75
2/4	Ck. 5279-R. Driggers	\$2.00	
2/5	Ck. 5283-R. Driggers	6.00	
2/4	Cash Repairs Chgo	4.56	
2/9	Ck. 5326-H. Kogen	8.42	
2/9	Ck. 5331-R. Driggers	6.00	
2/1	Cash-R. Driggers	5.00	
2/11	Ck. 5339-Driggers Carmi Ill	10.00	
2/13	Ck. 5381-R. Driggers	5.00	
2/13	Ck. 5383-C. I. T. Corp	116.16	
2/14	Ck. 5394-Royer Pump Co	39.66	
2/18	Cash Retained by T. E. B. from Cash Report 2/14	23.11	
2/18	Ck. 5412-R. Driggers	14.62	
2/18	Ck. 5414-H. Kogen	18.01	
2/18	Ck. 5419-R. Driggers	6.00	
2/21	pro 26538 6002 Ice 60 Salt	1.50	
2/22	Ck. 5457-C. I. T. Corp	129.63	
2/22	Ck. 5460-R. Driggers	6.00	
2/25	Ck. 5471-R. Driggers	10.50	
2/25	Ck. 5472-H. Kogen	25.07	
2/26	Ck. 5483-Bdwy. Serv. Sta	9.06	
2/26	Ck. 5487-R. Driggers	6.00	
2/27	Ck. 5492-C. I. T. Corp	129.53	
2/27	Ck. 5496-Universal Credit	89.55	
2/27	PL & P.D. Jan	25.00	
2/27	Check-charge Feb	2.00	
2/27	PL & P.D. Feb	25.00	
2/27	Dft. 174-H. Kogen	15.57	
2/28	Ck. 5531-R. Driggers	6.00	
3/1	Ck. 5536-Dft. 167	20.00	
3/4	Ck. 5685-Roers. serv. Sta	19.98	
3/4	5286 Ck. Sunset Auto Co	3.63	
3/4	Ck. 5687-Draft 146	15.00	
3/4	Ck. 5687-Draft 175	7.50	
2/14	L. D. Call Summit-Chgo	.10	
3/4	Ck. 5693-Wm. Shandalev Oil	25.00	
2/16	L. D. Call Summitt-Chgo	.10	
2/18	L. D. Call Lyons-Chgo	.10	
2/21	L. D. Call Lyons-Chgo	.10	
2/23	L. D. Call Lyons-Chgo	.10	
1/26	L. D. Call Peoria-Chgo	1.55	
472-37	2/2 To St. Louis		30.00
	2/5 To Chicago		30.00
	2/6 To St. Louis		30.00
	2/9 To Chicago		30.00
	2/10 To St. Louis		30.00
	2/13 To Chicago		30.00
	2/14 To St. Louis		30.00
	2/16 To St. Louis		30.70
	2/18 To Chicago		10.00
	2/19 To St. Louis		37.00
	2/21 To St. Louis		30.00
	2/22 To Chicago		30.00
	2/23 To St. Louis		30.00
	2/26 To Chicago		30.00
	2/27 Credit on Phone Charge to Bluffs Chgd. 12/24		1.08
	2/27 To St. Louis		30.00
	2/28 To Chicago		30.00
3/1	Debit Balance		20.65
	Total	811.48	811.48

272 UNITED STATES VS. N. E. ROSENBLUM TRUCK LINES ET AL.

472-38

STATEMENT OF T. E. BAULOS

ACCOUNT OF TRUCK #2

Month of March 1935

1935	Items	Debits	Credits
3.1	Debit Balance from Feb. a/c	\$20.65	
3.2	Ck 5674-R. Driggers	8.07	
3.4	Ck 5686-R. Driggers	6.00	
3.6	Damage pro. 22759	.50	
3.7	Hallenberg Wagner Motor 1/2 bill	22.17	
3.8	Ck 5711-R. Driggers	6.00	
3.9	Bell Tire Co. 1/2 bill	37.71	
3.13	J. Baggett 8 hrs. bringing load from Staunton	2.40	
3.11	Ck 5735-H. Kogen	26.83	
3.11	Ck 5763-R. Driggers	6.00	
3.13	Ck 5776-R. Driggers	11.09	
3.15	Ck 5790-T. E. Baulos	125.00	
3.16	Ck 5800-Dft 228	20.00	
3.20	T. E. Baulos-Adv. Chgo	15.00	
3.18	Ck 5821-H. Kogen	16.24	
3.18	Ck 5823-Roers Serv. Sta	31.95	
3.19	Ck 5845-R. Driggers	6.00	
3.21	Ck 5862-R. Driggers	12.00	
3.25	Ck 5909-Roers Serv. Sta	34.15	
3.26	Ck 5915-Bell Tire Co	25.00	
3.27	Jefferson Stationers Damage Claim pro. 22751 3/2/35	8.00	
3.27	Ck 5937-R. Driggers	6.00	
3.28	Ck 5943-Dft 279	20.00	
3.29	Ck 5970-R. Driggers	12.00	
3.30	Ck 5978-Bell Tire Co	10.00	
4.1	Gas-Sacramento Auto Ldy	7.85	
4.2	Gas-Roers Serv. Sta	13.77	
4.3	Gas-H. Kogen-Chgo	17.04	
4.6	Ice & Salt pros 27605-6-7-3-29	1.40	
3.30	Ck. Charge	2.00	
3.30	P.L. & P.D. March	25.00	
3.2	To St. Louis		\$30.00
3.4	To Chicago		30.00
3.5	To St. Louis		30.00
3.6	To Chicago		15.00
3.7	To St. Louis		30.00
3.11	To Chicago		30.00
3.12	To St. Louis		30.00
3.19	To Chicago		30.00
3.20	To St. Louis		30.00
3.21	To Chicago		30.00
472-39 3.25	To St. Louis		30.00
3.27	To Chicago		30.00
3.28	To St. Louis		30.00
3.29	To Chicago		30.00
3.30	Debit Bal. Fwd.		150.82
	Total	555.82	555.82

472-40

STATEMENT OF T. E. BAULOS

ACCOUNT OF TRUCK #2

Month of April 1935

1935	Items	Debits	Credits
41	Debit Balance from March	\$150.82	
41	Ck 5999—Dft 295 F. Munoz	13.38	
43	Ck 6022—R. Driggers	8.00	
44	Ck 6042—R. Driggers	6.00	
412	L. D. Call, Carlinville, Ill.	78	
412	Telegram from Farmersville	82	
410	Gas—Roers Serv. Station	22.70	
411	Gas—Sacramento Auto	18.49	
415	Gas—Roers Serv. Sta.	17.42	
415	Gas—Sacramento Auto	21.50	
419	Ice & Salt 44, 27879 80-81	3.40	
419	Ice & Salt 47, 27808 90	2.10	
423	Roers Serv. Sta.	18.75	
425	500 Ice—25 Salt 415	1.63	
425	500 Ice—25 Salt 419	1.63	
46	Ck. 6282—Bob Neimeyer	12.00	
48	Ck. 6295—Bell Tire Co.	10.00	
410	Ck. 6135—Bob Neimeyer	12.00	
412	Ck. 6152—Farmersville, Ill.	20.00	
412	Ck. 6162—R. Driggers	6.00	
415	Ck. 6191—Bell Tire Co.	10.00	
415	Ck. 6199—R. Driggers	12.82	
416	Ck. 6210—C. I. T. Corp.	131.00	
417	Ck. 6231—Bob Roberts	12.00	
425	Gas—Sacramento Auto Ldy	19.01	
426	Ice 412—28137-38-39-40	3.80	
429	Gas—Roers Garage	7.98	
429	Delivery to Schulze Bkg by Hunt	3.50	
429	Gas—Roers Station	14.04	
419	Ck. 6263—Bob Roberts	12.00	
420	Ck. 6285—Dft. 373	20.00	
420	Ck. 6397—Bob Roberts	12.00	
422	Ck. 6311—Bell Tire Co.	10.00	
425	Ck. 6370—Bob Roberts	15.00	
427	Ck. 6410—Bob Roberts	18.00	
427	Ck. 6424—Bell Tire Co.	32.15	
429	Ck. 6475—T. E. Baulos	17.50	
430	Ck. 6462—Dft. 421	6.00	
430	P.L. & P.D.	25.00	
52	Ck. 6491—Dft. 428	27.16	
430	Check Charge	2.00	
472-41	To St. Louis		\$30.00
44	To Chicago		30.00
45	To St. Louis		30.00
47	To Chicago		30.00
49	To St. Louis		30.00
410	To Chicago		30.00
411	To St. Louis		30.00
412	To Chicago		30.00
413	To St. Louis		15.00
415	To Chicago		15.00
416	To St. Louis		30.00
417	To Chicago		30.00
418	To St. Louis		30.00
419	To Chicago		30.00
420	To St. Louis		30.00
422	To Chicago		30.00
424	To St. Louis		30.00
425	To Chicago		30.00
426	To St. Louis		30.00
428	To Chicago		30.00
430	To St. Louis		30.00
1215	Add'l load to Gary		10.00
121	Unagert Damages		3.60
430	Refund Union Dues		7.50
430	Debit Balance fwd		122.37
	Total	758.47	758.47

274 UNITED STATES VS. N. E. ROSENBLUM TRUCK LINES ET AL.

472-42

STATEMENT OF T. E. BAULOS

ACCOUNT OF TRUCK #2

Month of May, 1935

1935	Items	Debits	Credits
5/1	Debit Balance Fwd	\$122.37	
5/1	Ck. 5576—Bob Roberts	15.00	
5/2	Gas—Sacramento Auto.	25.36	
5/6	500 Ice—25 Salt—4/22	1.63	
5/6	500 Ice—25 Salt—4/25	1.63	
5/7	Ice—pro. 28430-31 4/25	1.38	
5/6	J. A. New Co. C1-2/14/35 pro. 21900/Our 200	5.33	
5/6	Marshall Field C1 31475—our 194—pro. 22070 2/16/35	6.90	
5/10	Sacramento Auto Ldy.—Gas	18.93	
5/10	800 Ice—50 Salt—4/19	2.70	
5/13	Gas—Roer's Serv. Sta.	6.52	
5/13	Ck. 6714—J. Baggett	8.00	
5/13	Ck. 6719—Guy Wagoner—Gas	2.48	
5/16	Ck. 6773—J. Baggett	9.00	
5/13	Gas—Royers Garage	6.56	
5/16	Chapman Smith C1 W 406—our 223—pro. 42500	1.60	
5/20	Gas—Royers Garage	7.15	
5/20	Ck. 6833—J. Baggett	8.00	
5/21	Ck. 6841—Bell Tire Co	10.00	
5/22	Ck. 6900—Dft 480 Meat Drivers	12.00	
5/23	Ck. 6873—J. Baggett	8.00	
5/23	300 Ice—5/16	.82	
5/25	Ck. 6921—J. Baggett	4.00	
5/23	Sacramento Auto Ldy	17.29	
5/27	E. H. Hoffman Termnl Serv. Sta.	17.76	
5/27	W. J. Taylor Painting Tractor	1.00	
5/28	Ck. 16267—J. Baggett	8.00	
5/29	Ck. 6984—Nat'l Bond & Inv. Co.	44.00	
5/31	Gas—Sacramento Auto Ldy	16.55	
5/31	Lyon Metal Prod. C1-1d-916—Our 252-42477	8.01	
5/31	Ck. 7005—J. Baggett	8.00	
5/6	Gas—E. H. H. Term. Serv. Sta.	16.75	
5/6	Gas—Sacramento Auto Ldy	8.88	
5/6	Ice and Salt 29581-2-3-4-5	3.00	
5/31	Ly Hibbard-Spencer-Bartlett Bill	18.70	
5/31	PL. & PD.	25.00	
5/31	Check Charge	2.00	
5/2	To Chgo. Wrecked Load Trfd. from Hoff 2		\$30.00
5/4	To St. Louis		30.00
472- 3 5/6	To offset Debit in error 3W35—Bell Tire		37.71
5/13	To Chicago		30.00
5/15	To St. Louis		30.00
5/16	To Chicago		30.00
5/18	To St. Louis		30.00
5/20	To Chicago		30.00
5/22	To St. Louis		30.00
5/23	To Chicago		30.00
5/24	To St. Louis		30.00
5/26	To Chicago		30.00
5/31	To Chicago		30.00
5/31	Debit Bal. Fwd		82.59
	Total	480.30	480.30

472-44

STATEMENT OF T. E. BAULOS

ACCOUNT OF TRUCK #6

Month of June 1935

1935	Item	Debits	Credits
6/1	Dr. Balance Forward	\$82.59	
6/7	Phone to Chgo. about wreck	.30	
6/8	Roy Hofer—Mechanic Repairs	1.15	
6/11	Ice, Salt, Packs 29794-5-6-7-8-9	5.00	
6/13	Gas—E. H. H. Terminal Station	11.38	
6/15	Repairs—Mo. Auto Supply Co	.70	
6/15	Borbein Young—Repairs—Inv. 34672	17.85	
6/15	Telegram—St. Louis 5/10	.44	
6/15	Telegram—Maros 5/16	.58	
6/15	Gas—Sacramento Auto Laundry	17.01	
6/18	Gas—E. H. H. Terminal Service Station	16.94	
6/20	Gas—Sacramento Auto Laundry	10.18	
6/25	Libby McNeil & Libby Claim—Our No. #286	9.95	
6/25	Gas—E. H. H. Terminal Service Station	13.68	
6/27	Gas—Sacramento Auto Laundry	24.83	
6/27	300 Ice—25 Salt—6/22	1.07	
6/4	Ck 7084—J. Baggett	8.00	
6/5	Ck 7096—Dft. 531 Baggett	8.00	
6/5	Ck 7108—Federal Ills. Garage	7.45	
6/8	Ck 7180—J. Baggett	4.00	
6/10	Ck 7201—T. E. Baulos	25.00	
6/11	Ck 7215—J. Baggett	8.00	
6/14	Ck 7285—J. Baggett	8.00	
6/18	Ck 7351—J. Baggett	8.00	
6/19	Ck 7356—R. Hofer	3.50	
6/20	Ck 7370—Bue Tire Company	10.00	
6/22	Ck 7434—R. Hofer	2.50	
6/22	Ck 7436—J. Baggett	8.00	
6/27	Ck 7480—J. Baggett	10.00	
6/30	PL. & P.D.	25.00	
6/30	Check Charge	2.00	
6/30	Firestone DR. 1	25.00	
6/1	To St. Louis		\$30.00
6/4	To Chicago		30.00
6/6	To St. Louis		30.00
6/11	To Chicago		30.00
6/14	To Chicago		30.00
6/17	To St. Louis		30.00
6/18	To Chicago		30.00
6/20	To St. Louis		30.00
6/22	To Chicago		30.00
6/25	To St. Louis		30.00
6/27	To Chicago		30.00
6/28	To St. Louis		30.00
6/30	Dr. Balance		16.10
	Total	376.10	376.10

276 UNITED STATES VS. N. E. ROSENBLUM TRUCK LINES ET AL.

472-45

STATEMENT OF T. E. BAULOS

ACCOUNT OF TRUCK #6

Month of July 1935

1935	Item	Debits	Credits
	Balance Brought Forward	\$16.10	
7/2	E. H. H. Term. Serv. Sta., June Gas a/c	9.12	
7/1	Sacramento Auto Laundry, June Gas a/c	7.60	
7/1	Ck 7515—Jim Baggett	8.00	
7/2	Ck 7535—Paul Moore	25.00	
7/8	5 Liver Racks—pro. 44360—June a/c	.50	
7/3	Ck 7550—Nat'l Bond & Inv. Co	44.00	
7/6	Ck 7615—T. E. Baulos	3.00	
7/9	Ck 7635—Jim Baggett	10.00	
7/6	Ck 7610—R. Hofer Repairs	.75	
7/9	E. H. H. Term. Serv. Station	7.45	
7/9	Sacramento Auto Ldry	7.37	
7/10	Cash Adv. by E. H. H. to T. E. B.	1.00	
7/15	Bls. Bell Tel. Co. June a/c	2.40	
7/13	Ck 7703—Jim Baggett	4.00	
7/15	Ck 7724—Jim Baggett	8.00	
7/17	E. H. H. Term. Serv. Station	7.60	
7/18	Ck 7754—J. Baggett	9.00	
7/19	Ck 7769—T. E. Baulos	24.00	
7/20	Rou Hofer	1.00	
7/13	Draft 666	1.94	
7/16	Draft 676	2.55	
7/16	Sacramento Auto Laundry	8.76	
7/21	Ck 7801—J. Baggett	9.00	
7/23	Ice & Salt	3.00	
7/24	Ck 7843—J. Baggett	8.00	
7/25	Ck 7903—J. Baggett	10.00	
7/30	Ck 7943—J. Baggett	6.00	
7/31	Ck 7956—Universal Credit Co	24.50	
7/31	Ck 7958—Mrs. T. E. Baulos	35.00	
7/31	Sears Cl 188173—our 301	5.50	
7/24	E. H. H. Terminal Service Station	18.17	
7/31	E. H. H. Terminal Service Station	14.89	
7/31	Sunset Auto Co. 13314	7.81	
7/23	Sacramento Auto Ldry	17.05	
7/29	T. E. Baulos Cash Repairs	15.25	
7/31	Sacramento Auto Ldry	16.07	
7/31	PL 7 P.D., Ins	25.00	
7/31	Check Charge	2.00	
7/20	Cash—J. Baggett	1.00	
7/3	To St. Louis		\$30.00
7/9	To Chicago		15.00
7/12	To St. Louis		26.50
7/15	To Chicago		30.00
7/17	To St. Louis		30.00
7/18	To Chicago		30.00
7/19	To St. Louis		30.00
472-46 7/21	To Chicago		22.50
7/22	To St. Louis		30.00
7/24	To Chicago		30.00
7/25	To St. Louis		30.00
7/27	To Chicago		30.00
7/29	To St. Louis		30.00
7/31	To St. Louis		30.00
7/31	Debit Bal. Fwd		33.38
	Total	427.38	427.38

472-47

STATEMENT OF T. E. BAULOS

ACCOUNT OF TRUCK #6

Month of August 1935

1935	Item	Debits	Credits
	Dr. Balance	\$33.38	
8/1	Ck. 778—J. Baggett	8.00	
8/3	Ck. 834—J. Baggett	3.00	
8/6	Ck. 8111—J. Baggett	8.00	
8/6	Ck. 8113—T. E. Baulos	25.00	
8/10	Ck. 8201—T. E. Baulos	10.50	
8/12	Ck. 8217—J. Baggett	9.00	
8/5	Cash J. Baggett	1.00	
8/15	Cash for Bridge Fare	.30	
8/15	Ck. 8269—J. Sofia	8.00	
8/15	Ck. 8275—City Ice & Fuel Co	3.75	
8/17	Ck. 8317—T. E. Baulos	75.00	
8/21	Ck. 8362—C. Gordon	8.00	
8/24	Ck. 8411—C. Gordon	4.00	
8/27	Ck. 8471—C. Gordon	9.00	
8/30	Ck. 8513—C. Gordon	9.00	
8/13	Ice St. Louis Ind. Fkg. 38581-2	3.00	
8/15	Bulzoff—pro. 45850	4.85	
8/17	Ice Swift 31754-5-5-31782	5.35	
8/24	Ice Swift-31879	2.80	
8/28	Frt. on pro. 30558 P. Fox Sons	8.32	
8/3	L. D. Care Chgo	1.80	
8/8	Natl. Ice & Fuel Co	3.60	
8/6	E. H. H. Term. Serv. Sta	22.19	
8/13	E. H. H. Term. Serv. Sta	14.66	
8/15	Sunset Auto. Co	7.81	
8/21	City Ice & Fuel Co	4.80	
8/21	E. H. H. Term. Serv. Sta	15.35	
8/24	R. Hofer	.25	
8/27	E. H. H. Service Sta	16.44	
8/27	City Ice & Fuel Co	2.70	
8/31	R. Hofer	.75	
8/31	E. H. H. Term. Serv. Sta	12.81	
8/3	Drft. 788	3.18	
8/22	Dft. 802—C. Gordon	5.00	
8/26	Dft. 928—T. E. Baulos	17.50	
8/27	Dft. 933-Sac Auto Ldy	22.00	
8/3	Ice Swift-31195	3.10	
8/6	Dft. 801 Sac Auto Ldy	24.65	
8/13	Dft. 841 Sac Auto Ldy	22.63	
8/20	Dft. 875 Sac Auto Ldy	8.35	
8/31	P.L. & P.D.	25.00	
8/31	Check Charge	2.00	
8/2	To St. Louis		\$30.00
8/6	To Chicago		30.00
8/7	To Chicago		30.00
8/7	To St. Louis		30.00
8/9	To Chicago		30.00
8/10	To St. Louis		30.00
8/12	To Chicago		30.00
8/13	To St. Louis		30.00
8/15	To Chicago		30.00
8/17	To St. Louis		30.00
8/19	To St. Louis		30.00
8/21	To Chicago		30.00
8/22	To St. Louis		30.00
8/24	To Chicago		30.00
8/26	To St. Louis		30.00
8/27	To Chicago		24.50
8/28	To St. Louis		30.00
8/30	To Chicago		30.00
8/31	To St. Louis		30.00
	Total	478.32	564.50
	Credit		86.18

472-48

472-49

STATEMENT OF T. E. BAULOS

ACCOUNT OF TRUCK #6

Month of September 1935

1935	Item	Debits	Credits
			\$80 15
9-1	Credit Balance Forward		
9-3	Ck 8569 - C. Gordon	\$9 00	
9-5	Ck 8610 - J. Baggett	9 00	
9-6	Ck 8612 - W. C. Tel.	5 00	
9-7	Ck 8660 - Mrs. T. E. Baulos	35 00	
9-9	Ck 8663 - T. E. Baulos	27 12	
9-10	Ck 8702 - J. Baggett	8 00	
9-12	Ck 8734 - J. Baggett	8 00	
9-14	Ck 8773 - Nat'l. Bond & Inv. Co	181 00	
9-14	Ck 8787 - J. Baggett	13 00	
9-17	Ck 8800 - J. Baggett	8 00	
9-19	Ck 8855 - J. Baggett	8 00	
9-20	Ck 8891 - Mrs. T. E. Baulos	20 00	
9-21	Ck 8926 - L. Brown	7 00	
9-23	Ck 8952 - J. Baggett	8 00	
9-26	Ck 9015 - J. Baggett	8 00	
9-29	Ck 9072 - J. Baggett	3 00	
9-9	Gas & Oil St. L.	14 44	
9-7	Ice & Salt City I. & F. Co	4 77	
9-16	Gas & Oil St. L.	29 82	
9-21	Hofer	1 00	
9-23	Gas & Oil St. L.	14 47	
9-30	Gas & Oil St. L.	27 20	
9-7	Hofer	59	
9-7	Sears Roebuck	83 01	
9-7	S 2 Phone	35	
9-7	Hofer	35	
9-17	Draft 1081 - Gas & Oil	22 90	
9-25	Draft 1135 - Gas & Oil	21 50	
9-4	Draft 978 - Gas & Oil	8 99	
9-30	Insr. & Check Charge	27 00	
9-30	Long Dist. Tel. - Aurora	3 50	
9-30	Pro 6538 collected by Baulos	83	
9-30	Rietler Tire Co	4 07	
9-3	To Chicago		\$24 50
9-4	To St. Louis		30 00
9-5	To Chicago		30 00
9-10	To Chicago		30 00
9-11	To St. Louis		30 00
9-13	To St. Louis		30 00
9-12	To Chicago		30 00
9-14	To Chicago		15 00
9-16	To St. Louis		30 00
9-17	To Chicago		30 00
9-18	To St. Louis		30 00
9-19	To Chicago		30 00
472-52			
9-20	To St. Louis		30 00
9-23	To Chicago		22 50
9-25	To St. Louis		30 00
9-26	To Chicago		30 00
9-27	To St. Louis		30 00
9-29	To Chicago		24 50
	Total	612 82	595 68
	Debit	17 14	

472-51

STATEMENT OF T. E. BAULOS

ACCOUNT OF TRUCK #6

Month of October 1935

1935	Item	Debits	Credits
10/1	Dr. Bal. Fwd	\$17.14	
10/1	Ck. 9095	8.00	
10/2	Ck. 9110—J. Baggett	5.00	
10/2	Ck. 9114—R. Friend	8.00	
10/4	Ck. 9146—J. Baggett 8.00—R. Friend 4.00	12.00	
10/5	Ck. 9168—R. Hofer	1.26	
10/5	Ck. 9184—R. Friend	3.00	
10/7	Ck. 9194—R. Feazen 5.00—R. Friend 4.00	9.00	
10/9	Ck. 9251—R. Feazen 4.00—J. Baggett 8.00	12.00	
10/11	Ck. 9267—R. Feazen	6.00	
10/11	Ck. 9272—J. Baggett	8.00	
10/12	Ck. 9310—Nat'l Credit Co.	24.50	
10/12	Ck. 9312—1/3 J. J. Green	31.82	
10/15	Ck. 9351—J. Baggett	12.00	
12/18	Ck. 9392—J. Baggett	8.00	
12/18	Ck. 9390—(P. C.) Cash Bridge Fare	30	
12/21	Ck. 9430—J. Soffa	8.00	
12/5	Ice Swift	5.10	
8/3	Ck. 9056—R. Hofer	1.50	
10/9	E. H. H. Term. Serv. Sta	16.26	
10/16	E. H. H. Term. Serv. Sta	23.96	
10/22	E. H. H. Term. Serv. Sta	15.20	
10/3	Dft. 1194—M. D. U.	17.00	
10/9	Dft. 124—Sacramento Auto	33.64	
10/12	Dft. 1276—Stone Wheel & Rim	2.00	
10/14	Dft. 1285—Roxy Cafe	11.40	
10/16	1321 Dft.—H. P. Wolford	25.00	
10/23	Ck. 9449—J. Baggett	8.00	
10/15	Sacramento Auto	18.57	
10/22	Sacramento Auto	27.00	
10/28	Dft. 1430—Ban Credit	16.50	
10/29	E. H. H. Term. Serv. Sta	22.02	
10/17	Co. 411—Sears 172442	8.45	
10/25	Cl. 424—Sears 172999	14.77	
10/26	Ck. 9509—J. Baggett	19.09	
10/26	Ck. 9517—A. Glenk	8.06	
10/29	Ck. 9567—Securities Inv. Co. 1/3	45.40	
10/30	Ck. 9593—A. Glenk	8.60	
10/30	Borlein Young & Co	13.43	
10/30	Mendenhall Motor Co	21.32	
10/30	E. H. H. Term. Serv. Sta	16.42	
10/2	Dft. 1181—Sacramento Auto	19.91	
10/30	Dft. 1443—Sacramento Auto	16.24	
10/31	Dft. 1439—A. Glenk	15.00	
10/31	Pl. & PD	25.00	
10/31	Check Charge	2.00	
472-52			
10/1	To St. Louis		\$30.00
10/2	To Chicago		30.00
10/3	To St. Louis		30.00
10/4	To Chicago		30.00
10/5	To St. Louis		30.00
10/7	To Chicago		30.00
10/9	To St. Louis		30.00
10/9	To Chicago		30.00
10/16	To St. Louis		30.00
10/11	To Chicago		30.00
10/14	To St. Louis		30.00
10/15	To Chicago		30.00
10/18	To St. Louis		30.00
10/18	To Chicago		30.00
10/19	To St. Louis		30.00
10/21	To Chicago		30.00
10/22	To St. Louis		26.50
10/23	To Chicago		30.00
10/24	To St. Louis		24.50
10/26	To Chicago		30.00
10/29	To St. Louis		30.00
10/30	To Chicago		30.00
10/31	To St. Louis		30.00
	Total	650.10	681.00
	Credit		

280 UNITED STATES VS. N. E. ROSENBLUM TRUCK LINES ET AL.

472-53

STATEMENT OF T. E. BAULOS

ACCOUNT OF TRUCK #6

Month of November, 1935

1935	Item	Debits	Credits
11/1	Credit Balance		\$30.90
11/5	Dft. 1400—Sacramento Auto Ldy	\$17.31	
11/6	Dft. 1505—Vesely Bros	2.37	
11/6	Dft. 1506—Universal Credit	24.50	
11/1	Ck. 9635—J. Baggett	8.00	
11/2	Ck. 9672—Nat'l Bond & Inv. Co	44.00	
11/4	Ck. 9683—T. E. Baulos	35.00	
11/5	Ck. 9726—J. Baggett	8.00	
11/8	Ck. 9790—J. Baggett	8.00	
11/12	E. H. H. Term. Serv. Sta	14.90	
11/9	Dft. 1523—Case Liquor	27.50	
11/13	Dft. 1553—Sacramento Auto	20.31	
11/12	Ck. 9846—J. Baggett	3.00	
11/12	Ck. 9854—R. Hofer	.75	
11/14	Ck. 9918—J. Baggett	8.00	
11/20	E. H. H. Term. Serv. Sta	6.23	
11/9	Ck. 456—Sears R. Co	2.27	
11/15	Mendenhall Motor—1618	4.00	
11/14	Reifler Tire Co	1.25	
11/13	Empire Auto Sup. #37	1.79	
11/5	Cash—S. Marin (Bridge)	.30	
11/12	Cash—J. Baggett (Bridge)	.30	
11/16	Ck. 9980—J. Baggett	4.00	
11/18	Ck. 9987—J. Baggett	8.00	
11/18	Ck. 10005—Sunset Auto Co	25.00	
11/18	Ck. 10006—Litzinger Motor	25.00	
11/21	Ck. 10073—J. Baggett	8.00	
11/20	Dft. 1602—Sacramento Auto	20.74	
11/26	E. H. H. Term. Serv. Sta	15.44	
11/27	Dft. 1651—Sacramento Auto	21.75	
11/30	P.L. & P.D. Dues 3/4 Mo	18.75	
11/30	Check Charge 3/4 Mo.	1.50	
11/1	To Chicago		30.00
11/4	To St. Louis		30.00
11/2	To Chicago		30.00
11/7	To St. Louis		30.00
11/8	To Chicago		30.00
11/11	To St. Louis		30.00
11/14	To Chicago		30.00
11/21	Sunset Auto D—Chgo		7.81
11/22	Cl. 456 Declined		2.27
11/18	To Chicago		30.00
11/19	To St. Louis		30.00
11/21	To Chicago		15.00
11/26	Add'l Rev. Sept. Mfr		17.00
	Total	385.96	342.98
	Debit	42.98	

472-54

STATEMENT OF T. E. BAULOS

ACCOUNT OF TRUCK #6

Month of December, 1935

1935	Item	Debits	Credits
12/1	Debit Balance	\$42.98	
12/4	Claim #475—Renard Linoleum	13.00	
12/28	Claim 690—James McCoy Co	.75	
	Total	56.73	
	Debit	56.73	

472-55

Exhibit 10

STATEMENT OF T. E. BAULOS

ACCOUNT OF TRUCK #7

Month of January 1935

1935	Items	Debits	Credits
1/4	Ck. 4941—Bob Roberts	\$8.00	
1/5	Ck. 4970—Bob Roberts	8.00	
1/8	Ck. 4989—Royer Garage	26.34	
1/9	Ck. 5005—T. E. Baulos	100.00	
1/9	Ck. 5009—Bob Roberts	10.00	
1/11	Ck. 5028—Bob Roberts	10.00	
1/14	Ck. 5090—Bob Roberts	2.00	
1/15	Ck. 5064—Bwdy. Svc. Sta.	1.58	
1/15	Ck. 5066—H. Kogen	21.98	
1/16	Ck. 5078—Bob Roberts	10.00	
1/17	Ck. 5091—Royers Garage	9.60	
1/18	Ck. 5125—Bob Roberts	10.00	
1/19	Ck. 5126—H. Kogen	16.20	
1/16	600 fee—60 Salt—pro. 257/d	1.50	
1/21	Park Drug Co., Damage, pro. 20588	3.60	
1/21	Bob Roberts—Ck. 5142	3.00	
1/22	Ck. 5152—Bwdy. Svc. Sta.	6.00	
1/23	Ck. 5165—Bob Roberts	10.00	
1/24	Ck. 5172—Royers Garage	26.32	
1/24	Ck. 5178—C. I. T. Corp.	114.54	
1/28	Ck. 5213—Bwdy. Svc. Sta.	9.88	
1/28	Ck. 5219—H. Kogen	22.27	
2/1	Ck. 5247—H. Kogen	15.00	
2/1	Ck. 5296—Bob Roberts	40.00	
1/31	Check Charge Jan	2.06	
1/31	Ck. 5273—Dft. 92	10.00	
1/31	Ck. 5273—H. Kogen	.80	
1/31	Credit Balance to Feb. Acct	129.39	
1/2	Bal. from Dec. Acct		\$148.10
1/2	To Chicago		30.00
1/3	To St. Louis		30.00
1/4	To Chicago		30.00
1/5	To St. Louis		30.00
1/7	To Chicago		30.00
1/8	To St. Louis		30.00
1/9	To Chicago		30.00
1/10	To St. Louis		30.00
1/14	To Chicago		30.00
1/15	To St. Louis		30.00
1/16	To Chicago		30.00
1/17	To St. Louis		30.00
1/21	To Chicago		30.00
1/23	To Chicago		30.00
1/31	To St. Louis		30.00
1/22	To St. Louis		30.00
	Total	628.10	628.10

282 UNITED STATES VS. N. E. ROSENBLUM TRUCK LINES ET AL.

472-56

STATEMENT OF T. E. BAULOS

ACCOUNT OF TRUCK #1

Month of February, 1935

1935	Items	Debits	Credits
2/1	Credit Bal. From Jan. Acct.		\$129.39
2/6	Ck. 5292—Bob Roberts	\$12.00	
2/8	Ck. 5320—Bob Roberts	12.00	
2/9	Ck. 5326—H. Kogen	21.24	
2/9	Ck. 5334—Herman Body	14.09	
2/9	L. D. Call—Chicago	2.55	
2/13	Ck. 5375—Bob Roberts	15.00	
2/13	Ck. 5378—Bob Roberts	12.00	
2/14	Ck. 5394—Royer Pump Co.	26.56	
2/15	Ck. 5396—Bob Roberts	10.00	
2/18	Ck. 5414—H. Kogen	24.70	
2/19	Ck. 5425—Bwly. Serv. Sta.	24.63	
2/19	Ck. 5429—Bob Roberts	10.00	
2/21	Ck. 5444—Bob Roberts	9.00	
2/23	Ck. 5461—Bob Roberts	10.00	
2/23	Sears Claim 189961—Pro. 21029/1/22/35	.47	
2/23	Sears Cl.—188175—pro. 19807—2/29/34	5.50	
2/26	Sears Cl.—189439—pro. 20853—1/17/35	.25	
2/26	Sears Cl.—189615—pro. 20550—1/10/35	1.00	
2/25	Ck. 5472—H. Kogen	15.30	
2/26	Ck. 5483—Bdwy Serv. Sta.	31.22	
2/27	Ck. 5493—C. I. T. Corp.	116.18	
2/27	Ck. 5494—Bob Roberts	12.00	
2/27	Ck. 5496—Universal Credit	50.00	
2/27	PL. & PD. Ins. Jan.	25.00	
2/27	Dft. 174—H. Kogen	36.20	
2/28	Sears cl.—189736—pro. 17250—7/31/34	6.05	
2/28	Sears cl.—190296—pro. 21001—1/22/35	.70	
2/28	Sears cl.—190364—pro. 26196—2/7/35	5.00	
3/1	Ck. 5636—Dft. 173	12.00	
3/4	Ck. 5685—Royers Serv. Sta.	19.98	
3/4	Ck. 5687—Draft 175	15.00	
3/4	Ck. 5687—Litzinger Motor	35.03	
3/1	Credit Bal. To March a/c	82.09	
2/27	Ck. Charge February	2.00	
2/27	PL. & PL. Ins. February	25.00	
2/2	To Chicago		30.00
2/5	To St. Louis		30.00
2/6	To Chicago		30.00
2/7	To St. Louis		30.00
2/10	To St. Louis		30.00
2/12	To St. Louis		30.00
2/13	To Chicago		30.00
2/14	To St. Louis		30.00
472-57 2/16	To Chicago		30.00
2/18	To St. Louis		30.00
2/19	To Chicago		30.00
2/20	To St. Louis		30.00
2/21	To Chicago		30.00
2/22	To St. Louis		30.00
2/23	To Chicago		30.00
2/25	To Springfield—Turn around		20.00
2/26	To St. Louis		30.00
2/27	Sears Cl. 184916—Charged 11/6/34 in error		.45
2/27	To Chicago		30.00
2/28	To St. Louis		30.00
	Total	599.84	696.94

472-58

STATEMENT OF T. E. BAULOS

ACCOUNT OF TRUCK #1

Month of March, 1935

1935	Items	Debits	Credits
3/1	Credit Balance Forward		\$82.09
3/1	Ck. 5635—Bob Roberts	\$15.00	
3/2	Ck. 5677—Bob Roberts	8.00	
3/7	Hallenberg Wagner Motor 1/2 Bill	22.18	
3/6	Ck. 5791—Bob Roberts	10.00	
3/9	Bell Tire Co. 1/2 bill	37.72	
3/11	Ck. 5753—Bob Roberts	10.00	
3/11	Ck. 5755—H. Kogen	21.16	
3/12	Ck. 5766—Dft. 208 H. Kogen	25.00	
3/15	Ck. 5784—Dft. 233	50.00	
3/15	Ck. 5785—Bob Roberts	12.00	
3/16	Damage—pro. 22206—2/20/35	72	
3/18	Ck. 5820—Bob Roberts	10.00	
3/18	Ck. 5823—Roers Scr. Sta	31.96	
3/18	Ck. 5821—H. Kogen	18.25	
3/19	Ck. 5837—Union Dues—Roberts	12.00	
3/20	Ck. 5851—Bob Roberts	10.00	
4/22	Ck. 5896—Bob Roberts	12.00	
3/25	Ck. 5896—Bob Roberts	10.00	
3/25	Ck. 5897—H. Kogen	30.05	
3/25	Ck. 5909—Roers Serv. Sta	34.16	
3/26	Ck. 5915—Bell Tire Co	25.00	
3/27	Ck. 5932—Bob Roberts	10.00	
3/29	Ck. 5909—Bob Roberts	12.00	
3/30	Ck. 5978—Bell Tire Co	10.00	
4/1	Gas—Sacramento Auto Ldy	5.91	
3/30	P.L. & P.D. March	25.00	
3/30	Check Charge March	2.00	
4/2	Gas—Roers Serv. Sta	29.05	
4/3	Gas—H. Kogen, Chicago	12.56	
3/27	E. H. H. Cash To T. E. Baulos	4.00	
4/6	Gas—I. Steinberg	7.20	
3/30	Cr. Bal Fwd	249.17	
3/1	To Chicago		30.00
3/2	To St. Louis		30.00
3/4	To Chicago		30.00
3/5	To St. Louis		30.00
3/6	To Chicago		30.00
3/7	To Lincoln & Spg		30.00
3/9	To St. Louis		30.00
3/12	To Chicago		30.00
3/13	To Lincoln Turn		30.00
3/14	To St. Louis		30.00
3/15	To Chicago		30.00
3/16	To St. Louis		30.00
472-59 3/18	To Chicago		30.00
3/19	To St. Louis		30.00
3/20	To Chicago		30.00
3/21	To St. Louis		30.00
3/22	To Chicago		30.00
3/23	To St. Louis		30.00
3/25	To Chicago		30.00
3/26	To St. Louis		30.00
3/27	To Chicago		30.00
3/28	To St. Louis		30.00
3/29	To Chicago		30.00
	Total	772.09	772.09

284 UNITED STATES VS. N. E. ROSENBLUM TRUCK LINES ET AL.

472-60

STATEMENT OF T. E. BAULOS

ACCOUNT OF TRUCK #1

Month of April 1935

1935	Items	Debits	Credits
4/1	Credit Balance		\$20.17
4/1	Ck 5999—Dft. 288	\$20.00	
4/1	Ck 6001—Bob Roberts	10.00	
4/4	Ck 6040—Bob Roberts	12.00	
4/5	Ck 6047—Dft. 310	24.50	
4/10	Gas—Roers Serv. Sta	16.77	
4/11	Gas—Sacramento Auto	14.00	
4/15	Gas—Roers Serv. Sta	13.88	
4/15	Gas—Sacramento Auto	26.89	
4/18	500 Ice 4/8/35	1.37	
4/23	Gas—Roers Serv. Sta	25.43	
4/8	Ck 6095—Bell Tire Co	10.00	
4/9	Ck 6101—I. Steinberg Dft. 324	7.20	
4/9	Ck 6101—Dft. 329	20.00	
4/11	Ck 6145—Bob Roberts	12.00	
4/12	Ck 6156—Dft. 347—Formac	6.00	
4/12	Ck 6159—C. I. T. Corp	119.22	
4/13	Ck 6176—Bob Roberts	17.50	
4/13	Ck 6178—Dft. 346	25.00	
4/15	Ck 6191—Bell Tire Co	10.00	
4/15	Ck 6239—Bob Neumeyer	6.00	
4/17	Ck 6240—Bob Neumeyer	8.00	
4/25	Sacramento Auto Ldry	25.67	
4/22	Western Union Telegrams in Mar. Paid from Chicago	6.91	
4/26	Gas—Roers Serv. Sta	13.71	
4/19	Ck 6265—Bob Neumeyer	8.00	
4/20	Ck 6285—Dft. 379	7.96	
4/22	Ck 6311—Bell Tire Co	10.00	
4/22	Ck 6312—Roers Garage	5.92	
4/23	Ck 6328—Bob Neumeyer	17.30	
4/23	Ck 6340—Bob Neumeyer	6.00	
4/26	Ck 6393—Bob Neumeyer	10.00	
4/29	Ck 6454—Nat'l Bond	44.00	
4/29	Ck 6456—T. E. Baulos	17.50	
4/30	Ck 6461—Bob Roberts	8.00	
4/30	P.L. & P.D.	25.00	
4/30	Check Charge	2.00	
4/30	Credit Balance Fwd	265.94	
4/1	To Chicago		30.00
4/3	To St. Louis		30.00
4/4	To Chicago		24.50
472-61 4/5	To St. Louis		30.00
4/8	To Chicago		30.00
4/9	To Ottawa		30.00
4/10	To Ottawa		30.00
4/10	To St. Louis		30.00
4/11	To Chicago		30.00
4/12	To St. Louis		30.00
4/15	To Chicago		30.00
4/16	To St. Louis		30.00
4/17	To Chicago		30.00
4/18	To St. Louis		30.00
4/20	To Chicago		30.00
4/22	To St. Louis		30.00
4/23	To Chicago		30.00
4/25	To St. Louis		30.00
4/26	To Chicago		30.00
4/29	To St. Louis		30.00
4/30	To Chicago		30.00
4/30	To correct entry charged twice, I. Steinberg Draft 324		7.20
	Total	880.87	880.87

472-62

STATEMENT OF T. E. BAULOS

ACCOUNT OF TRUCK #1

Month of May 1935

1935	Items	Debits	Credits
	Credit Balance		\$265.94
5.1	Ck. 6504—Bob Neimeyer	\$8.00	
5.2	L.D. Call Chgo. Wreck	2.30	
5.2	Gas—Sacramento Auto	14.30	
5.6	Royers Garage—Gas	15.01	
5.7	Sears Cl. #192067—Our #163	25.09	
5.7	Sears Cl. #193298—Our #166	37.37	
5.7	H. & R. Furn. Co. Cl—Our #197—pro 11089—8.9.34	6.75	
5.6	E. Main St. Garage—Taylorville Damage Pon. Sedan—Mrs. Opal Angle	11.00	
5.6	Ck. 6559—Bob Neimeyer	14.92	
5.6	Ck. 6570—Baulos 1	26.92	
5.6	Ck. 6571—Universal Credit	24.50	
5.10	Sacramento Auto Ldy. Gar	15.94	
5.9	Telegram Ottawa—Chgo 4.10.35	.30	
5.10	Ck. 6651—Bob Neimeyer	16.00	
5.11	Ck. 6679—C. I. T. Corp	116.96	
5.14	Ck. 6726—Dfr 469	40.00	
5.14	Ck. 6728—Mrs. T. E. Baulos	15.00	
5.14	Ck. 6733—Bob Neimeyer	5.52	
5.17	Ck. 6766—Bob Neimeyer	8.00	
5.14	Cash Adv. Chgo. Rep. 5.13	2.00	
5.15	Sears Cl. 194025—Our #224 pro. 41822, 4.18.35	2.46	
5.16	Sacramento Auto Ldy.—Gas	10.94	
5.20	Gas—Royers Garage	6.72	
5.21	Ck. 6841—Bell Tire Co	10.60	
5.21	Ck. 6852—Bob Neimeyer	16.00	
5.22	Ck. 6857—J. J. Green	24.50	
5.22	Ck. 6900—Dfr 498—Chgo. Auto Parts	3.98	
5.20	Gas—Wm. Shandalov	8.11	
5.22	Sears Cl. 194292—Our #229	4.53	
5.25	Ck. 6917—R. Hofer Repairs	4.50	
5.25	Ck. 6924—Bob Neimeyer	6.00	
5.23	Sacramento Auto Ldy	17.00	
5.27	E. H. Hoffman Term. Serv. Sta	15.21	
5.28	Ck. 6969—C. I. T. Corp	118.52	
5.28	Ck. 6973—Bob Neimeyer	8.00	
5.31	Herman Body Bill 33568	23.15	
5.31	Gas—Sacramento Auto Ldy	16.12	
5.31	Sears Cl. 194957—Our #255—pro. 42402	5.45	
5.31	Ck. 7013—Bob Neimeyer	8.00	
6.4	Gas—E. H. H. Term. Serv. Sta	14.66	
6.4	Gas—Sacramento Auto Ldy	14.69	
5.31	1.2 Hibbard Spencer Bartlett bill	18.70	
5.31	P.L. & P.D.	25.00	
5.31	Check Charge	2.00	
472-63	To St. Louis		30.00
5.2	To Chicago		30.00
5.6	To offset charge in error 3.9.35 Bell Tire		37.72
5.9	To St. Louis		30.00
5.10	To Chicago		30.00
5.13	To St. Louis		30.00
5.14	To Chicago		30.00
5.16	To St. Louis		30.00
5.17	To Chicago		15.00
5.20	To St. Louis		30.00
5.21	To Chicago		30.00
5.23	To St. Louis		30.00
5.25	To Chicago		30.00
5.27	To St. Louis		30.00
5.28	To Chicago		30.00
5.31	To Chicago		59.39
5.31	Debit Balance Fwd.		
	Total	798.05	798.05

286 UNITED STATES VS. N. E. ROSENBLUM TRUCK LINES ET AL.

472-64

STATEMENT OF T. E. BAULOS

ACCOUNT OF TRUCK #7

Month of June 1935

1935	Items	Debits	Credits
6/1	Dr. Bal. Fwd	\$59.39	
6/8	Ray Hofer—Mechanic Repairs	1.60	
6/13	Gas—E. H. H. Term Serv Sta	16.39	
6/15	Gas—Sacramento Auto Ldy	21.68	
6/18	Gas—E. H. H. Term Serv Sta	14.88	
6/20	Gas—Sacramento Auto Ldy	7.91	
6/25	Gas—E. H. H. Term Serv Sta	15.50	
6/27	Gas—Sacramento Auto Ldy	22.79	
6/3	Ck 7077—Bob Niemeyer	2.00	
6/4	Ck 7080—Bob Niemeyer	8.00	
6/6	Ck 7123—Bob Niemeyer	5.00	
6/7	Ck 7153—Bob Niemeyer	8.00	
6/11	Ck 7211—Bob Niemeyer	2.00	
6/12	Ck 7221—Bob Niemeyer	4.50	
6/12	Ck 7238—Bob Niemeyer	8.00	
6/15	Ck 7312—Bob Niemeyer	8.00	
6/18	Ck 7370—Bell Tire Co	10.00	
6/15	Ck 7318—Universal Credit	24.50	
6/18	Ck 7352—Bob Niemeyer	8.00	
6/20	Ck 7372—Dft. 359—L. Hoffman	15.00	
6/21	Ck 7412—Bob Niemeyer	8.00	
6/25	Ck 7450—Bob Niemeyer	8.00	
6/28	Ck 7492—Bob Niemeyer	8.00	
5/24	Cash—Bob Niemeyer	2.00	
6/30	PL & PD	25.90	
6/30	Check Charge	2.00	
6/30	Royer Garage	6.02	
6/4	To Chicago		\$30.00
6/5	To St. Louis		30.00
6/7	To Chicago		30.00
6/10	Herman Body Cr Memo 1032		23.15
6/8	To St. Louis		30.00
6/12	To Chicago		30.00
6/13	To St. Louis		30.00
6/15	To Chicago		30.00
6/18	To Chicago		30.00
6/20	To St. Louis		30.00
6/21	To Chicago		30.00
6/25	To Chicago		30.00
6/27	To St. Louis		30.00
6/28	To Chicago		30.00
	Total	322.16	413.15
	Credit		90.99

472-65

STATEMENT OF T. E. BAULOS

ACCOUNT OF TRUCK #7

Month of July 1935

1935	Items	Debits	Credits
	Credit Brought Fwd		\$90.99
7/2	E. H. H. Term. Serv. Sta.—Gas, June a/c	\$7.60	
7/1	Sacramento Auto Ldy.—Gas, June a/c	13.61	
7/3	Ck. 7561—Bob Neimeyer	8.00	
7/6	Ck. 7615—T. E. Baulos	3.00	
7/9	Ck. 7634—Bob Neimeyer	8.00	
7/9	E. H. H. Term. Serv. Sta	10.80	
7/8	Dft. 642—Meat Drivers Union	12.00	
7/8	Sacramento Auto Ldy	6.70	
7/13	Ck. 7686—Bob Neimeyer	8.00	
7/16	Ck. 7731—Bob Neimeyer	8.00	
7/17	E. H. H. Term. Serv. Sta	16.03	
7/18	Ck. 7758—Bob Neimeyer	8.00	
7/19	Ck. 7769—T. E. Baulos	24.00	
7/16	Sacramento Auto Ldy	5.48	
7/16	Dft. 690—Mrs. T. E. Baulos	25.00	
7/22	Ck. 7814—B. Neimeyer	8.00	
7/25	Ck. 7859—B. Neimeyer	8.00	
7/27	Ck. 7889—Bob Neimeyer	10.00	
7/29	Ck. 7927—Bob Neimeyer	8.00	
7/31	9192—Bob Neimeyer	8.00	
7/31	Ck. 7963—T. E. Baulos	40.00	
7/12	Sears Cl. 197346—Our 315	2.92	
7/31	Schulze Bkg. Co. Cl.—our 330	5.42	
7/24	E. H. H. Term. Serv. Sta	18.08	
7/31	E. H. H. Term. Serv. Sta	7.90	
7/31	Borbein Young & Co.	15.00	
7/23	Sacramento Auto Ldy	24.52	
7/31	Sacramento Auto Ldy	16.34	
7/31	P.L. & P.S. Dues Ins.	25.00	
7/31	Check Charge	2.00	
7/31	Credit Bal Fwd	224.50	
7/3	To Chicago		30.00
7/5	To St. Louis		30.00
7/9	To Chicago		30.00
7/10	To St. Louis		30.00
7/13	To Chicago		30.00
7/15	To St. Louis		30.00
7/16	To Chicago		30.00
7/17	To St. Louis		30.00
7/18	To Chicago		30.00
7/19	To St. Louis		30.00
7/22	To Chicago		30.00
7/23	To St. Louis		30.00
7/25	To Chicago		24.50
7/26	To St. Louis		30.00
7/29	To Chicago		22.50
7/30	To St. Louis		30.00
7/31	To Chicago		30.00
	Total	587.99	587.99

472-66

288 UNITED STATES VS. N. E. ROSENBLUM TRUCK LINES ET AL.

472-67

STATEMENT OF T. E. BAULOS

ACCOUNT OF TRUCK #7

Month of August 1935

1935	Items	Debits	Credits
8/1	Credit Balance Forward		\$224.59
8/3	Ck. 8054	\$3.00	
8/5	Ck. 8091—Bob Neimeyer	8.00	
8/8	Ck. 8146—Bob Neimeyer	8.00	
8/9	Ck. 8109—J. Baggett	9.00	
8/10	Ck. 8185—Mrs. T. E. Baulos	35.00	
8/10	Ck. 8196—B. Neimeyer	15.00	
8/12	Ck. 8218—F. Wright	8.00	
8/12	Cash for Bridge fare	.30	
8/16	Ck. 8291—F. Wright	10.00	
8/17	Ck. 8311—R. Hofer	4.25	
8/19	Ck. 8330—Fo. Wright	2.00	
8/20	Ck. 8347—F. Wright	10.90	
8/24	Ck. 8443—F. Wright	3.00	
8/29	Ck. 8479—F. Wright	9.00	
8/18	Cash—C. Gordon	1.00	
8/27	Cash—F. Wright	2.00	
8/31	Ck. 8543—E. E. Taylor	8.00	
8/12	Sears R. Co.—Cl. 336	2.89	
8/21	Lammers Furn. Co.—Cl. 344	2.35	
8/21	Sear R. Co.—Cl. 347	2.23	
8/6	E. H. H. Term. Serv. Sta.	16.95	
8/13	E. H. H. Term. Serv. Sta.	15.80	
8/13	Sunset Auto Co.	4.80	
8/21	E. H. H. Term. Serv. Sta.	19.36	
8/27	E. H. H. Term. Serv. Sta.	9.31	
8/31	B. Neimeyer Repairs	.50	
8/31	R. Hofer	1.75	
8/31	E. H. H. Term. Serv. Sta.	19.65	
8/14	Dft. 848—T. E. Baulos	15.00	
8/31	Natl. Ice & Fuel Co. 8/30	4.00	
8/22	Dft. 899—T. E. Baulos	15.00	
8/23	Dft. 906—F. Wright	4.00	
8/26	Dft. 928—T. E. Baulos	17.50	
8/27	Dft. 937—F. Wright	6.00	
8/30	Dft. 937—F. Wright	10.00	
8/27	Dft. 933—Sac Auto Ldy	23.90	
8/6	Dft. 891—Sac. Auto Ldy	13.13	
8/13	Dft. 841—Sac Auto Ldy	12.33	
8/20	Dft. 875—Sac Auto Ldy	21.43	
8/31	P.L. & P.D.	25.00	
8/31	Check Charge	2.00	
8/1	To St. Louis		30.00
8/5	To Chicago		30.00
8/6	To St. Louis		30.00
8/8	To Chicago		22.59
8/9	To St. Louis		30.00
8/12	To Chicago		30.00
8/14	To St. Louis		30.00
8/16	To Chicago		30.00
8/20	To Chicago		15.00
8/22	To St. Louis		30.00
8/23	To St. Louis		30.00
8/24	To St. Louis		30.00
8/27	To Chicago		11.25
8/29	To St. Louis		30.00
8/29	To Chicago		30.00
8/30	To St. Louis		30.00
8/31	To Chicago		30.00
8/20	Lead Tfrd at Morrisonville, Ill. 7/2		15.00
	Total	399.53	708.34
	Credit		308.81

472-68

472-69

STATEMENT OF T. E. BAULOS

ACCOUNT OF TRUCK #7

Month of September 1935

1935	Items	Debits	Credits
9/3	Balance Brought Forward.....		\$308.81
9/11	St. L. Ind. Pkg. Co.—Racks.....	\$0.50	
9/14	Swift & Co.—Ice.....	2.80	
9/23	St. L. Ind. Pkg. Co.—Ice & salt.....	3.00	
9/28	Swift—Ice.....	5.60	
9/4	Ck. 8580—F. Wright.....	10.00	
9/6	Ck. 8622—F. Wright.....	9.00	
9/7	Ck. 8661—T. E. Baulos.....	10.00	
9/9	Ck. 8663—T. E. Baulos.....	27.12	
9/10	Ck. 8668—T. E. Baulos.....	128.50	
9/10	Ck. 8696—F. Wright.....	8.00	
9/12	Ck. 8735—Cox Motor.....	4.33	
9/12	Ck. 8736—F. Wright.....	8.00	
9/16	Ck. 8813—F. Wright.....	8.00	
9/18	Ck. 8836—F. Wright.....	5.00	
9/18	Ck. 8849—F. Wright.....	8.00	
9/23	Ck. 8951—F. Wright.....	8.00	
9/24	Ck. 8957—Nameeki Garage.....	8.65	
9/28	Ck. 9062—Sunset Auto.....	55.68	
9/29	Ck. 9073—P. Salmon.....	8.00	
9/9	Gas & Oil—St. L.....	14.53	
9/7	Ice & Salt—City I. & F.....	2.44	
9/16	Gas & Oil—St. L.....	16.17	
9/23	Gas & Oil.....	17.00	
9/14	Ice & Salt—City I. & F.....	3.22	
9/21	Ice & Salt—City I. & F.....	3.48	
9/30	Gas & Oil—St. Louis.....	10.25	
9/30	Hofer.....	.50	
9/30	Hofer.....	7.00	
9/30	Mendenhall.....	5.84	
9/17	Draft 1081—Gas & Oil.....	17.51	
9/25	Draft 1135—Gas & Oil.....	4.44	
9/4	Draft 978—Gas & Oil.....	15.18	
9/5	Draft 991—F. Wright.....	4.00	
9/7	Draft 1010—F. Wright.....	3.00	
9/10	Draft 1022—Gas & Oil.....	23.49	
9/12	Draft 1031—F. Wright.....	3.00	
9/30	Insurance & Check Charge.....	27.00	
9/3	To St. Louis.....		30.00
9/4	To Chicago.....		30.00
9/5	To St. Louis.....		30.00
9/6	To Chicago.....		24.50
9/7	To St. Louis.....		26.50
9/10	To Chicago.....		30.00
9/11	To St. Louis.....		30.00
472-70 9/12	To Chicago.....		30.00
9/14	To St. Louis.....		30.00
9/16	To Chicago.....		30.00
9/17	To St. Louis.....		30.00
9/23	To Chicago.....		15.00
9/28	To Chicago.....		30.00
9/30	To St. Louis.....		30.00
	Total.....	503.63	704.81
	Credit.....		201.18

290 UNITED STATES VS. N. E. ROSENBLUM TRUCK LINES ET AL.

472-71

STATEMENT OF T. E. BAULOS

ACCOUNT OF TRUCK #7

Month of October 1935

1935	Items	Debits	Credits
	Credit Balance Forward.....		\$201.18
10/1	Ck. 9097—P. Salmon.....	\$8.00	
10/2	Ck. 2148—P. Salmon.....	8.00	
10/3	Ck. 9164—R. Hofer.....	2.40	
10/7	Ck. 9190—P. Salmon.....	8.00	
10/9	Ck. 9228—P. Salmon.....	8.00	
10/11	Ck. 9259—P. Salmon.....	8.00	
10/12	Ck. 9311—Universal Credit Co.....	54.50	
10/12	Ck. 9312—J. J. Green 1/3.....	31.82	
10/13	Ck. 9346—P. Salmon.....	8.00	
10/18	Ck. 9380—Petty Cash.....	.20	
10/18	Ck. 9390—J. West.....	8.00	
10/12	Ice Swift.....	4.80	
10/21	Ice Swift.....	6.90	
10/23	Ice St. L. Ind. Pkg. Co.....	2.25	
10/11	Cl. 403—Sears.....	15.33	
10/9	E. H. H. Term. Serv. Sta.....	13.38	
8/3	Ck. 8036—R. Hofer.....	1.50	
10/16	E. H. H. Term. Serv. Sta.....	22.85	
10/22	E. H. H. Term. Serv. Sta.....	16.92	
10/9	Dft. 1249—Sacramento Auto.....	17.02	
10/12	Dft. 1276—M.D. U.....	5.00	
10/16	Dft. 1322—T. E. Baulos.....	25.00	
10/16	Dft. 1323—P. Salmon.....	10.78	
10/23	Ck. 9437—J. West.....	6.00	
10/24	Ck. 9664—J. West.....	8.09	
10/15	Sacramento Auto.....	37.98	
10/22	Sacramento Auto.....	52.63	
10/26	Dft. 1416.....	14.31	
10/29	E. H. H. Term. Serv. Sta.....	18.66	
10/26	Dft. 1420—Ban Credit.....	16.50	
10/19	Cl. 421 Sears 172853.....	1.07	
10/28	Ck. 9535—J. West.....	5.05	
10/28	Ck. 9537—J. West.....	8.00	
10/29	Ck. 9567—Securities Inv. Co. 1/3.....	45.40	
10/28	Swift—Ice.....	2.80	
10/28	Swift—Ice.....	1.40	
10/28	St. L. Ind. Pkg. —Ice.....	1.50	
10/22	Cash Adv. J. West.....	8.00	
10/22	City Ice & Fuel Co.....	2.40	
10/30	City Ice & Fuel Co.....	.97	
10/30	Cash collected by Glenk—not turned in—Pro-34436.....	6.47	
10/30	E. H. H. Term. Serv. Sta.....	16.56	
10/19	Dft. 1356—J. West.....	15.00	
10/30	Dft. 1435—Litonizer Motor.....	12.89	
10/30	Dft. 1443—Sacramento Auto.....	53.65	
10/31	P.L. & P.D.....	25.00	
10/31	Check Charg.....	2.90	
472-72 10/2	To Chicago.....		30.00
10/3	To St. Louis.....		30.00
10/4	To Chicago.....		30.00
10/6	To St. Louis.....		30.00
10/7	To Chicago.....		30.00
10/8	To St. Louis.....		30.00
10/9	To Chicago.....		24.80
10/10	To St. Louis.....		30.00
10/11	To Chicago.....		30.00
10/12	To St. Louis.....		30.00
10/13	To Chicago.....		30.00
10/16	To St. Louis.....		30.00
10/18	To Chicago.....		30.00
10/19	To St. Louis.....		30.00
10/22	To Chicago.....		30.00
10/23	To St. Louis.....		30.00
10/24	To Chicago.....		30.00
10/26	To St. Louis.....		30.00
10/28	To Chicago.....		30.00
10/30	To St. Louis.....		30.00
	Total.....	648.89	795.68
	Credit.....		146.79

472-73

STATEMENT OF T. E. BAULOS

ACCOUNT OF TRUCK #7

Month of November 1935

1935	Items	Debits	Credits
11/1	Credit Balance		\$146.79
11/5	Dft. 1490—Sacramento Auto Ldy.	\$9.77	
11/1	Ck. 9634—J. West	8.00	
11/2	Ck. 9671—Universal Credit	34.00	
11/4	Ck. 9676—T. E. Baulos	35.00	
11/5	Ck. 9722—J. West	8.00	
11/8	Ck. 9785—J. West	8.00	
11/11	Ck. 9828—Benton Tire	2.00	
11/12	E. H. H. Term. Serv. Sta	19.29	
11/9	Dft. 1520—Vesley Bros	1.95	
11/11	Dft. 1533—J. West	1.00	
11/13	Dft. 1533—Sacramento Auto	18.83	
11/12	Ck. 9850—J. West	4.00	
11/14	Ck. 9919—J. West	8.00	
11/15	Ck. 9932—Securities Inv. Co	40.02	
11/20	E. H. H. Term. Serv. Sta	9.06	
11/8	Cash—J. West (Bridge)	30	
11/14	Cash—J. West (Bridge)	30	
11/16	Cash—T. A. Woort (Delvys)	45	
11/20	Cash—A. Glenk (Bridge)	30	
11/18	Ck. 9984—J. West	8.00	
11/20	Ck. 10055—J. West	8.00	
11/20	Dft. 1602—Sacramento Auto	14.97	
11/26	E. H. H. Term. Serv. Sta	18.42	
11/26	City Ice & Fuel Co	1.90	
11/27	Dft. 1651—Sacramento Auto	17.77	
11/30	Swift & Co., Ice	3.10	
11/30	Midwest Ice Co	2.00	
11/30	P.L. 7 P.D. 3/4 Mo	18.75	
11/30	Check Chrg. 3/4 Mo	1.50	
11/1	To Chicago		30.00
11/4	To St. Louis		30.00
11/5	To Chicago		30.00
11/7	To Chicago		30.00
11/11	To St. Louis		30.00
11/14	To Chicago		30.00
11/15	To St. Louis		30.00
11/18	To Chicago		30.00
11/19	To St. Louis		30.00
11/20	To Chicago		30.00
11/30	Claim 330 Declined		5.42
	Total	322.68	452.21
	Credit		129.53

472-74

STATEMENT OF T. E. BAULOS

ACCOUNT OF TRUCK #7

Month of December 1935

1935	Items	Debits	Credits
12/19	Credit Balance		\$129.53
12/20	Pro. 33559—Not reported	1.27	
12/20	Pro. 34147—Not Reported	.50	
12/27	Oesch T. frt Stmt. 8/17/35	1.62	
12/31	Empire Auto sup co. 11/7	3.05	
	Total	6.44	129.53
	Credit		123.09

292 UNITED STATES VS. N. E. ROSENBLUM TRUCK LINES ET AL.

Exhibit 11

472-75

STATEMENT OF T. E. BAULOS

ACCOUNT OF TRUCK #13

Month of July 1935

1935	Items	Debits	Credits
7/5	Ck 7581—Paul C. Moore	\$121.00	
7/9	Ck 7628—License plates & fitters	10.63	
7/10	Ck 7642—F. Wright	8.00	
7/15	Day & Night Garage	10.55	
7/13	Ck 7609—Frank Wright	8.00	
7/17	E. H. H. Term Serv. Sta.	33.01	
7/17	Ck 7738—F. Wright	8.00	
7/20	Ck 7792—F. Wright	8.00	
7/16	Sacramento Auto Ldy	8.94	
7/20	Roy Hoder	.75	
7/26	Ice & Salt 31122 3-4-5.	5.00	
7/23	Ck 7826—F. Wright	8.00	
7/26	Ck 7882—F. Wright	10.00	
7/29	Ck 7910—F. Wright	7.48	
7/29	Ck 7931—F. Wright	10.66	
7/31	Ck 7957—Securities Inv. Co.	136.20	
7/24	E. H. H. Term. Serv. Sta.	13.37	
7/31	E. H. H. Term. Serv. Sta.	14.29	
7/23	Sacramento Auto Ldy	31.44	
7/31	Sacramento Auto Ldy	20.15	
7/31	Cash Advance Chgo.—Dft. 763	8.00	
7/31	PL. & PD. Ins.	25.00	
7/31	Check Charge	2.00	
7/31	Debit Bal Fwd.		\$192.81
7/10	To Chicago		30.00
7/12	To St. Louis		30.00
7/13	To Chicago		30.00
7/16	To St. Louis		30.00
7/17	To Chicago		30.00
7/18	To St. Louis		30.00
7/20	To Chicago		30.00
7/22	To St. Louis		30.00
7/23	To Chicago		15.00
7/25	To St. Louis		30.00
7/26	To Chicago		30.00
7/27	To St. Louis		30.00
7/29	To Chicago		30.00
7/30	To St. Louis		30.00
	Total	807.81	507.81

472-76

STATEMENT OF T. E. BAULOS

ACCOUNT OF TRUCK #13

Month of August 1935

1935	Items	Debits	Credits
8/1	Dr. Balance	\$102.81	
8/1	Ck 7965-E. Morrison	25.00	
8/3	Ck 8042-B. Roberts	25.00	
8/3	Ck 8050-E. Morrison	8.00	
8/9	Ck 8155-Borbein Young	45.00	
8/9	Ck 8156-Herman Body Co.	20.00	
8/14	Ck 8250-J. Baggett	12.00	
8/17	Ck 8311-R. Hofer	2.00	
8/19	Ck 8334-J. Baggett	12.00	
8/22	Ck 8387-J. Baggett	9.00	
8/24	Ck 8434-J. Baggett	3.00	
8/24	Ck 8440-J. Baggett	9.00	
8/29	Ck 8478-J. Baggett	9.90	
8/18	Cash-J. Baggett	2.00	
8/31	Ck 8542-J. Baggett	10.00	
8/6	E. H. H. Term. Serv. Sta	6.84	
8/21	E. H. H. Term. Serv. Sta	4.41	
8/24	R. Hofer	2.00	
8/27	E. H. H. Term. Serv. Sta	23.48	
8/31	E. H. H. Term. Serv. Sta	7.75	
8/17	Dft 854-J. Baggett	10.00	
8/21	Dft 880-A. Kreisel	18.75	
8/23	Dft 911	1.07	
8/27	Dft 933-Sac. Auto Ldy	19.70	
8/6	Dft 801-Sac. Auto Ldy	8.31	
8/20	Dft 875-Sac. Auto Ldy	12.14	
8/31	Reserve	60.00	
8/31	Pl. & PD	25.00	
8/31	Check Charge	2.00	
8/14	To Chicago		\$12.00
8/17	To St. Louis		30.00
8/19	To Chicago		26.50
8/21	To St. Louis		30.00
8/22	To Chicago		24.50
8/23	To St. Louis		30.00
8/24	To Chicago		30.00
8/26	To St. Louis		30.00
8/29	To Chicago		30.00
8/30	To St. Louis		30.00
8/5	Cash Ret'd by E. Morrison (Ck 25.00)		5.00
8/20	To Credit Charge in error		4.11
	Total	495.26	282.17
	Debit	213.00	

472-77

STATEMENT OF T. E. BAULOS

ACCOUNT OF TRUCK #13

Month of September 1935

1935	Items	Debits	Credits
9/1	Balance brought forward	\$213.09	
9/7	Swift—Ice	1.40	
9/23	St. L. Ind. Pkg. Co	5.00	
9/3	Ck. 8547—J. Baggett	8.00	
9/9	Ck. 8663—T. E. Baulos	27.00	
9/9	Ck. 8679—C. Gordon	13.48	
9/11	Ck. 8720—C. Gordon	8.00	
9/13	Ck. 8761—C. Gordon	8.00	
9/16	Ck. 8791—C. Gordon	8.00	
9/17	Ck. 8823—C. Gordon	8.00	
9/19	Ck. 8862—C. Gordon	8.00	
9/21	Ck. 8894—Herman Body	146.20	
9/23	Ck. 8954—J. Simpkins	20.00	
9/24	Ck. 8960—C. Gordon	8.00	
9/26	Ck. 9006—C. Gordon	1.00	
9/26	Ck. 9014—C. Gordon	7.00	
9/29	Ck. 9069—Hofer	.75	
9/30	Ck. 9082—C. Gordon	11.00	
9/21	Claim 380	.29	
9/21	Claim 381	.33	
9/9	Gas & Oil—St. L.	10.16	
9/16	Gas & Oil—St. L.	31.35	
9/23	Gas & Oil—St. L.	14.74	
9/30	Gas & Oil—St. L.	14.74	
9/4	Draft 975—T. E. Baulos	15.00	
9/7	Draft 1008—C. Gordon	8.00	
9/14	Draft 1050	7.50	
9/16	Draft 1081—Gas & Oil	25.92	
9/16	Draft 1070	33.71	
9/21	Draft 1119	15.00	
9/25	Draft 1134—Firestone	26.50	
9/4	Draft 978—Gas & Oil	18.08	
9/25	Draft 1135—Gas & Oil	13.47	
9/10	Draft 1022—Gas & Oil	11.08	
9/30	Insurance & Check Charge	27.00	
9/3	T. Chicago		\$30.00
9/5	To St. Louis		30.00
9/7	To St. Louis		24.50
9/9	To Chicago		26.50
9/10	To St. Louis		30.00
9/11	To Chicago		22.50
9/12	To St. Louis		30.00
9/13	To Chicago		26.50
472-78 9/14	To St. Louis		30.00
9/15	To Chicago		24.50
9/16	To St. Louis		30.00
9/17	To Chicago		22.50
9/18	To St. Louis		30.00
9/19	To Chicago		30.00
9/20	To St. Louis		30.00
9/25	To St. Louis		30.00
9/24	To Chicago		26.50
9/25	To St. Louis		30.00
9/26	To Chicago		30.00
9/27	To St. Louis		30.00
9/30	To Chicago		30.00
	Total	774.90	593.50
	Debit	181.40	

472-79

STATEMENT OF T. E. BAULOS

ACCOUNT OF TRUCK #13

Month of October 1935

1935	Items	Debits	Credits
10/1	Dr. Bal Fwd	\$181.40	
10/2	Ck 9111—C. Gordon	8.00	
10/4	Ck 9143—C. Gordon	8.00	
10/8	Ck 9216—W. Davidson	8.00	
10/8	Ck 9205—Sunset Auto	10.70	
10/11	Ck 9256—Day & Night Garage	10.55	
10/12	Ck 9312—J. J. Green—1/3	31.82	
10/12	Ck 9317—Gathman 8.00—Davidson 4.00	12.00	
10/16	Ck 9361—Gathman 8.00—Davidson 4.00	12.00	
10/16	Ck 9366—W. Shandalov	20.00	
10/18	Ck 9380—Petty Cash	1.30	
10/19	Ck 9410—E. Gathman	2.00	
10/21	Ck 9422—E. Gathman	8.00	
10/5	Ice—Swift	3.40	
10/12	Ice—Swift	6.60	
10/15	Ice—St. L. Ind. Pkg	3.00	
10/9	E. H. H. Term. Serv. Sta	25.84	
8/3	Ck 8056—R. Hofer	.95	
10/11	L. D. Call	.90	
10/16	E. H. H. Term. Serv. Sta	15.96	
10/22	E. H. H. Term. Serv. Sta	6.54	
10/1	Dft. 1174	15.00	
10/9	Dft. 1235—C. Gordon	3.00	
10/9	Dft. 1249—Sacramento Auto	9.14	
10/9	Dft. 1251—W. Davidson	2.72	
10/14	Dft. 1286—A. Kriesel	26.75	
10/23	Ck 9455—E. Gathman	8.00	
10/15	Sacramento Auto	17.00	
10/22	Sacramento Auto	18.28	
10/25	Dft. 1405	20.83	
10/26	Dft. 1420—Ban Credit	16.50	
10/29	E. H. H. Term. Serv. Sta	22.91	
10/26	Ck 9516—E. Gathman	2.00	
10/28	Ck 9552—E. Gathman	6.00	
10/29	Ck 9567—Securities Inv. Co. 1/3	45.40	
10/30	Ck 9586—E. Gathman	6.00	
10/30	Claim 431	.72	
10/31	Claim 435	1.70	
10/31	Empire Auto Sup. Co.	1.75	
10/31	Broadhead Motor Co.	21.53	
10/31	Tarvins Garage Onarga Ills	5.50	
10/31	R. D. Fickwiler Melvin Ills.	48.73	
10/31	E. H. H. Term. Serv. Sta	16.82	
10/31	PL & PD	25.00	
10/2	Dft. 1181—Sacramento Auto	29.17	
10/30	Dft. 1443—Sacramento Auto	48.56	
10/31	Check Charge	2.00	
472-80	To St. Louis		\$30.00
10/2	To Chicago		30.00
10/3	To St. Louis		30.00
10/4	To Chicago		26.50
10/7	To St. Louis		30.00
10/8	To Chicago		26.50
10/12	To Chicago		30.00
10/11	To St. Louis		30.00
10/14	To St. Louis		30.00
10/16	To Chicago		30.00
10/17	To St. Louis		30.00
10/21	To Chicago		30.00
10/22	To St. Louis		30.00
10/23	To Chicago		30.00
10/24	To St. Louis		30.00
10/28	To Chicago		30.00
10/29	To St. Louis		30.00
10/30	To Chicago		30.00
10/31	To St. Louis		30.00
	Total	808.06	563.00
	Debit	245.06	

296 UNITED STATES VS. N. E. ROSENBLUM TRUCK LINES ET AL.

472-81

STATEMENT OF T. E. BAULOS

ACCOUNT OF TRUCK #13

Month of November 1935

1935	Items	Debits	Credits
11/1	Dr. Balance Fwd	\$245.06	
11/5	Dft. 1490—Sacramento Auto	18.65	
11/1	Ck. 9637—A. Gathman	8.00	
11/5	Ck. 9723—B. Roberts	8.00	
11/5	Ck. 9724—E. Gathman	3.00	
11/7	Ck. 9669—B. Roberts	8.00	
11/9	Ck. 9810—B. Roberts	6.78	
11/6	St. L. Ind. Pkg. Co. Ice	6.50	
11/8	St. L. Ind. Pkg. Co. Ice	4.25	
11/13	E. H. H. Term. Serv. Sta	16.95	
11/13	Dft. 1553—Sacramento Auto	25.19	
11/13	Dft. 1554—Vesley Bros	7.13	
11/12	Ck. 9856—Caverly Tfr. Co	3.00	
11/12	Ck. 9854—B. Roberts	8.00	
11/15	Ck. 9930—B. Roberts	8.00	
11/20	E. H. H. Term. Serv. Sta	17.12	
11/9	Empire Auto Sup. Co. #13	2.22	
11/20	City Ice & Fuel Co. 8/3	3.20	
11/20	City Ice & Fuel Co. 8/24	1.07	
11/16	Cash—T. A. Woort (Delys)	.45	
11/18	Ck. 9989—Bob Roberts	5.00	
11/18	Ck. 9999—Bob Roberts	10.22	
11/19	Ck. 10027—Bob Roberts	8.00	
11/20	Dft. 1602—Sacramento Auto	13.78	
11/21	Dft. 1609—Sacramento Auto	32.50	
11/26	E. H. H. Term. Serv. Sta	8.36	
11/25	Ck. 10153—R. D. Fick W. R	48.73	
11/25	Ck. 10154—Austins Garage	9.59	
11/15	Swift & Co.—Ice	3.50	
11/25	Collection pro. 18722—Authy T. E. B	2.10	
11/27	Dft. 1651—Sacramento Auto	7.09	
11/17	Telegrams from Bloomington	.32	
11/30	P.L. & F.D. 3/4 Mo	18.75	
11/30	Check Charge	1.50	
11/1	To Chicago		\$30.00
11/4	To St. Louis		30.00
11/5	To Chicago		30.00
11/6	To St. Louis		30.00
11/7	To Chicago		30.00
11/8	To St. Louis		22.50
11/12	To Chicago		22.50
11/13	To St. Louis		30.00
11/15	To Chicago		30.00
11/16	To St. Louis		30.00
472-82			
11/19	To Chicago		30.00
11/21	To St. Louis		26.50
11/26	Add'l Rev. 3798—3968		7.50
	Total	570.01	349.00
	Debit	221.01	

472-83

STATEMENT OF T. E. BAULOS

ACCOUNT OF TRUCK #13

Month of December 1935

1935	Items	Debits	Credits
12/1	Dr. Balance Forward	\$221 01	
12/31	Empire Auto 11/14	1 75	
12/31	Empire Auto 11/27	2 78	
12/31	To Credit Dupl. Chg. See VR 10/37 also Ck. 10153		\$48 73
	Total	225 52	48 73
	Debit	176 79	

473

BEFORE INTERSTATE COMMERCE COMMISSION

Docket No. MC-36692 (Form BMC-A)

In the Matter of the APPLICATION OF TRUMAN E. BAULOS, OF 1314 WEST JACKSON BOULEVARD, CHICAGO, ILLINOIS, FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY OR PERMIT (FORM BMC-A), AUTHORIZING OPERATION AS A COMMON OR CONTRACT CARRIER BY MOTOR VEHICLE IN THE TRANSPORTATION OF COMMODITIES GENERALLY, IN INTERSTATE COMMERCE, IN THE STATES OF ILLINOIS AND MISSOURI OVER THE ROUTES SET FORTH IN SAID APPLICATION

ST. LOUIS, MISSOURI,

November 28, 1938, 10 a. m.

Before Joint Board No. 135, represented by Hon. John C. Highberger, Public Service Commission of Missouri; Hon. Lewis J. Freehof, Illinois Commerce Commission.

Present: H. W. Angle, Examiner, Interstate Commerce Commission.

Met pursuant to notice.

Appearances

M. E. Aronoff, 369 Paul Brown Building, St. Louis, Missouri, appearing for Truman E. Baulos, applicant.

B. W. LaTourette, 314 North Broadway, St. Louis, Missouri, appearing for Chicago-St. Louis operators.

J. H. Wright, Chicago, Illinois, and J. H. Miller, 1667 Railway Exchange Building, St. Louis, Missouri, appearing for Western Trunk Line Committee Rail Lines.

474

Proceedings

Mr. HIGHBERGER. The Interstate Commerce Commission has set for further hearing at this time and place MC 36692, Truman E.

Baulos, contract carrier application. By the application as amended, filed February 10, 1936, Truman E. Baulos, St. Louis, Missouri, seeks a permit authorizing operation in interstate or foreign commerce as a contract carrier by motor vehicle of general commodities between points in Illinois and Missouri over irregular routes. A hearing was held on December 1, 1936, before Joint Board No. 135, and a report and order recommending granting of the application as stated. An order was served March 22, 1938, and exceptions dated April 11th and April 23, 1938, were filed by certain of the protestants herein to the report and order recommended by the Examiner to whom the matter had been referred; and by petition of certain motor carriers, protestants herein, dated April 19, 1938, a further hearing in the premises was urged. Upon consideration of these matters, the application was reopened on May 21, 1938, for further hearing, and referred to Joint Board No. 135 on September 14, 1938, for further hearing. We will take the appearances in this case—who appears for the applicant?

Mr. ARONOFF. Meyer E. Aronoff, 369 Paul Brown Building, St. Louis, Missouri, appearing for the applicant, Truman E. Baulos.

475 Mr. LATOURETTE. B. W. LaTourette, 314 North Broadway, St. Louis, Missouri, appearing for the same parties as in the original hearing, as protestants.

Mr. FREEHOF. You did not appear on the original hearing.

Mr. LATOURETTE. Well, if the Joint Board please, if my appearance is not recorded on the record in the original hearing, I desire now that my appearance shall be noted; and I am representing a group of operators described in the original hearing as the St. Louis-Chicago operators, composed of some twenty lines operating between St. Louis and Chicago. I am an attorney at law, and a registered practitioner before the Interstate Commerce Commission.

Mr. HIGHREGER. I believe it would be well to have the record show the names of the parties that you are representing.

Mr. LATOURETTE. Very well. Anderson Motor Service Company; Be-Mac Transport Company, Inc.; Brashear Freight Lines; Chicago-St. Louis Transfer Company; Consolidated Forwarding Company, Inc.; Decatur Cartage Company; Highway Merchandise Carriers, Inc.; Mound City Forwarding Company; Night-hawk Freight Service; Peoria Cartage Company; Plaza Express Company; St. Louis Forwarding Company; Viking Freight Company, Inc.

476 Mr. FREEHOF. Mr. LaTourette, are all these carriers competing with the applicant in the territory between Chicago and St. Louis?

Mr. LATOURETTE. They are, sir.

Mr. FREEHOF. You do not mean to include Anderson in that, do you?

Mr. LATOURETTE. Well, Anderson was shown as a party.

Mr. FREEHOF. Didn't he have State rights?

Mr. LATOURETTE. He did. That name may be eliminated.

Mr. HIGHBERGER. Are there any other protestants?

Mr. MILLER. J. H. Miller, 1667 Railway Exchange Building, St. Louis, Missouri, appearing for Western Trunk Line Committee of Rail Lines, protestants. Mr. Wright is absent. Both of us are licensed practitioners before the Commission.

Mr. HIGHBERGER. Any other appearances?

(No response.)

Mr. ARONOFF. Mr. Highberger, if it is essential, I might add that I am a licensed practitioner before the Interstate Commerce Commission.

Mr. HIGHBERGER. We will recess this hearing until the completion of the Rosenblum case.

(Thereupon, a recess was taken until 9:30 o'clock p. m., the same day.)

AFTER RECESS—9:30 P. M.

Mr. HIGHBERGER. Now let us proceed with Docket No. 477 MC-36692, Truman E. Baulos, contract carrier application.

Is the applicant ready to proceed?

Mr. ARONOFF. Mr. Commissioner, we are willing to adopt the transcript and record previously submitted, adopt that in this case, subject to rebuttal of any testimony adduced herein, or adduced at this present hearing.

Mr. LATOURETTE. Mr. Aronoff, you mean the testimony adduced in the application of N. E. Rosenblum, an individual, doing business as N. E. Rosenblum Truck Lines?

Mr. ARONOFF. No; I am talking about the original record in the original hearing of MC-36692.

Mr. LATOURETTE. Then we will have to go over all this testimony again that was introduced in the Rosenblum case with reference to the partnership.

Mr. ARONOFF. Not if you want to stipulate. I am willing to stipulate with you as to the introduction of the present evidence into this record.

Mr. HIGHBERGER. The record covering the MC-36692 hearing held at Chicago December 1, 1936?

Mr. ARONOFF. That is right; I am offering that. I am adopting that, and am willing that the hearing be closed right there. If you want to stipulate that Mr. Shandalov's testimony be put into

this case, I will concur in that stipulation, plus the testimony of Rosenblum, Andrews, and Chervitz.

478 Mr. LATOURETTE. Very well; and Mr. Shandalov—

Mr. FREEHOF. Gentlemen, do you intend to stipulate that the exhibits will also be part of the record?

Mr. LATOURETTE. Yes.

Mr. ARONOFF. That's right.

Mr. FREEHOF. Then furnish the Board within ten days copies of all exhibits.

Mr. LATOURETTE. Speaking now on the record in the Baulos case, MC-36692—

Mr. ARONOFF. Mr. LaTourette, I would like to have this understood, clear it up: That we are adopting by stipulation the testimony adduced at this hearing of William Shandalov, Mr. Rosenblum, Mr. Andrews, and Mr. Chervitz. We do not concur or adopt the testimony of those three or four previous witnesses who testified as to what shipments Rosenblum did or did not carry, inasmuch as they would not be pertinent to the issues in this case.

Mr. LATOURETTE. That is agreeable.

Mr. ARONOFF. I would like to make this one further observation: That we are confining our proof on this hearing to the same evidence that was supposed to have been produced in that petition for reopening, and not going into any further question, because we were under the impression that the only evidence pertaining to this alleged partnership would be adduced here, in accordance with Rule 15-B of the Interstate Commerce Rules of Practice.

479 Mr. LATOURETTE. Are you speaking now in the Baulos record?

Mr. ARONOFF. Yes.

Mr. LATOURETTE. In answer to that, I have already made my position known, that the order of the Commission itself answers that question.

Mr. HIGHBERGER. That will be perfectly satisfactory, then, that this evidence taken in MC-13853, application of N. E. Rosenblum may be incorporated in MC-36692, if that is agreeable to all the parties.

Mr. ARONOFF. With certain mentioned exceptions. Am I correct, Mr. LaTourette?

Mr. LATOURETTE. Yes. I understand the testimony of the common carrier witnesses who appeared in the Rosenblum case testified only with respect to the issues in the Rosenblum case.

Mr. MILLER. Did you say the additional testimony?

Mr. HIGHBERGER. The additional testimony is what I mean.

Mr. LATOURETTE. May I address myself now to the record in the application of Truman E. Baulos, MC-36692, and move that

the application of that applicant be dismissed on the same grounds as mentioned in the Rosenblum case, and on the record in that case.

480 Mr. MILLER. We wish to adopt the same motion in behalf of the Western Trunk Line Committee.

Mr. HIGHBERGER. That motion will be taken under advisement.

Mr. FREEHOF. Do you have any further testimony to offer at this time?

Mr. LA'TOURETTE. No more.

Mr. HIGHBERGER. Do you gentlemen wish to file briefs in this case?

Mr. ARONOFF. Yes; I presume briefs have to be filed.

Exam. ANGLE. You are going to file separate briefs?

Mr. ARONOFF. Yes; separate briefs.

Mr. HIGHBERGER. December 28th, then, will be set as the brief date. There being nothing further, the hearing is closed.

(At 9:45 o'clock p. m., November 28, 1938, hearing closed.)

481 Before Interstate Commerce Commission

No. MC-FC 11232

Application for Substitution: Jacob B. Margolies, Doing Business as Manhattan Truck Lines, Purchaser, St. Louis, Missouri, and Truman E. Baulos, Seller, St. Louis, Missouri

Order granting application for substitution

Feb. 10, 1939

It appearing that the transaction for which authority is sought in the above-entitled matter, being application of Jacob B. Margolies, doing business as Manhattan Truck Lines, purchaser, under the Motor Carrier Act, 1935, for substitution as applicant in MC-36692, in lieu of Truman E. Baulos is not subject to provisions of section 213 of said act.

It further appearing that Jacob B. Margolies, doing business as Manhattan Truck Lines, is fit, willing, and able properly to perform service authorized by the operating rights sought to be acquired and to conform to the provisions of said act and the requirements, rules, and regulations thereunder.

It is ordered that said application for substitution be, and it is hereby, granted.

It is further ordered that nothing herein contained shall be construed as a determination of the rights of any person or persons under any provision of the act except those relating to transfer of operating rights as expressly provided herein.

By the Commission, division 5.

[SEAL]

W. P. BARTEL,

W. P. Bartel,

Secretary.

NOTE.—Docket No. MC-36992 has been assigned to the purchaser covering the operating rights transferred by this order.

482 In the Supreme Court of the United States

No. 52

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE
COMMISSION, APPELLANTS

vs.

N. E. ROSENBLUM TRUCK LINES, INC., A CORPORATION, APPELLEE

No. 53

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE
COMMISSION, APPELLANTS

vs.

JACOB B. MARGOLIES, AN INDIVIDUAL DOING BUSINESS AS MAN-
HATTAN TRUCK LINES, APPELLEE

Statement of points upon which the appellants intend to rely

Filed May 12, 1941

Pursuant to the provisions of Rule 13 of the Revised Rules of the Supreme Court of the United States, paragraph 9 thereof, the appellants file this, their designation of points upon which they intend to rely in the presentation of their appeals in the two above-styled cases, and of the parts of the respective records in said cases that they regard necessary for the consideration thereof.

I. The points upon which the appellants will rely are those set out in their assignment of errors filed in the District Court in the above-styled cases.

Respectfully submitted.

FRANK COLEMAN,

Frank Coleman,

Special Assistant to the Attorney General.

NELSON THOMAS,

Nelson Thomas,

Attorney,

Interstate Commerce Commission.

[File endorsement omitted.]

In the Supreme Court of the United States

October Term, 1941

No. 52

No. 53

Stipulation as to printing record and exhibits

Filed June 17, 1941

It is stipulated by and between the parties hereto that in lieu of the list of items set forth in the "Statement of Points upon which the Appellants intend to rely and the Parts of the Records necessary for the consideration thereof," heretofore filed, the Clerk shall print the following portions of the records in the above-styled cases, and the other portions of said transcripts of records shall be omitted from printing:

THE PORTIONS OF THE RECORD IN THE ROSENBLUM TRUCK LINES CASE

1. Petition of Rosenblum Truck Lines, Inc., to review, enjoin, suspend, and set aside order of the Interstate Commerce Commission (as amended by interlineation October 12, 1940). Filed October 8, 1940. (Tr., p. 5.)

2. Commission's report in proceeding No. MC-13853, Rosenblum Truck Lines, Inc., Contract Carrier Application, Exhibit A to the petition, which embraces report in No. MC-36692, Jacob B. Margolies, Successor to Baulos, Contract Carrier Application. (Tr., p. 11.)

3. Order of October 9, 1940, convening three-judge court. (Tr., p. 18.)
4. Answer of Interstate Commerce Commission, filed October 12, 1940 (omitting affidavit). (Tr., p. 22.)
5. Answer of United States, filed December 7, 1940 (omitting certificate of service). (Tr., p. 27.)
6. Court's opinion in both Rosenblum and Margolies Cases. (Tr., p. 31.)
7. Findings of fact and conclusions of law in Rosenblum Case, filed January 14, 1941. (Tr., p. 39.)
8. Final decree and judgment for plaintiff in Rosenblum Case, filed January 20, 1941. (Tr., p. 44.)
9. Assignment of errors, filed March 13, 1941. (Tr., p. 49.)
10. Order allowing appeal, filed March 13, 1941.
11. Praecipe for record on appeal, filed March 13, 1941. (Tr., p. 52.)
- 489 12. Designation of points upon which appellants intend to rely and of parts of record regarded necessary for the consideration thereof.

PARTS OF TRANSCRIPT OF THE INTERSTATE COMMERCE COMMISSION
RECORD IN THE ROSENBLUM PROCEEDING INTRODUCED IN EVIDENCE
AS AN EXHIBIT BY ROSENBLUM AND TRANSMITTED PHYSICALLY TO
THIS COURT AS A PART OF SAID RECORD .

13. Transcript of testimony taken at hearing before Examiner Woodrow at St. Louis, December 4, 1936 (60 pages).
14. Transcript of testimony at hearing before Examiner Angle at St. Louis, November 28, 1938.
15. Exhibits 1, 2, 3, 4, 5, and 6 to the testimony of Witness Rosenblum, introduced in evidence at the hearing before the Commission examiner on December 4, 1936, at St. Louis, Mo.
16. The recommended report and order of Examiner Woodrow, served August 9, 1937. (Said recommended report and order to be followed by the following paragraph: 'Admitted in evidence by the District Court over the objection of defendants' counsel that said recommended report and order are irrelevant and immaterial to the issues in the case.')
17. Order of the Commission of February 9, 1939, in proceeding styled N. E. Rosenblum Truck Lines, Inc., Contract Carrier Application, Purchaser, and N. E. Rosenblum, Seller.
18. Commission's order of July 1, 1940, denying application of the Rosenblum Company for contract carrier certificate.
- 490 19. Commission's order of October 1, 1940, denying Rosenblum Company's petition for reconsideration.

THE PORTIONS OF THE RECORD IN THE MARGOLIES CASE

20. Petition of Margolies to enjoin, suspend, and set aside order of the Interstate Commerce Commission (as amended by interlineation October 12, 1940), filed October 8, 1940 (without again printing report of the Commission, Exhibit A to the above-named petition, said report having hereinabove been printed as Exhibit A to the Rosenblum petition). (Tr. p. 5.)

21. Order convening three-judge court, filed October 9, 1940.

22. Answer of Interstate Commerce Commission, filed October 12, 1940 (omitting affidavit). (Tr. p. 21.)

23. Answer of United States, filed December 7, 1940 (omitting certificate of service). (Tr. p. 26.) (The Court's opinion not to be again printed, since it is already called for in designation in the Rosenblum Case.)

24. Findings of fact and conclusions of law, filed January 14, 1941. (Tr. p. 38.)

25. Final decree and judgment for plaintiff in the Margolies Case, filed January 20, 1941. (Tr. p. 43.)

26. Assignment of errors, filed March 13, 1941. (Tr. p. 48.)

27. Order allowing appeal, filed March 13, 1941. (Tr. p. 51.)

491 28. Praecipe for record on appeal, filed March 13, 1941. (Tr., p. 77.)

PARTS OF TRANSCRIPT OF THE INTERSTATE COMMERCE COMMISSION RECORD IN THE MARGOLIES-BAULOS PROCEEDING INTRODUCED IN EVIDENCE AS AN EXHIBIT BY MARGOLIES AND TRANSMITTED PHYSICALLY TO THIS COURT AS A PART OF SAID RECORD

29. Transcript of testimony taken before Examiner Maidens at Chicago, December 1, 1936.

30. Transcript of testimony taken at hearing in St. Louis, November 28, 1938, before Joint Board No. 135, in the matter of Baulos' application.

31. Commission's order of February 10, 1939, in MC-FC-11232, Application for substitution of Margolies, purchaser, for Baulos, seller.

32. Exhibits 1, 2, 3, 4, and 5 to the testimony of Witness Baulos, and Exhibits 6, 7, 8, 9, 10, and 11 to the testimony of Witness Goode, introduced in evidence at the hearing before Joint Board and Commission examiner at Chicago, December 1, 1936.

It is stipulated that since the issues in the two above-styled cases are substantially the same, the cases having been decided together, both in the lower court and before the Commission, the

above-designated portions of the records in said cases should be printed and bound together, but without duplication.

It is further stipulated and agreed that counsel for any of the parties may in brief or argument refer to any portion of said records or to any exhibit or portion thereof introduced in evidence before the Commission, notwithstanding that the same is not printed or not referred to in this stipulation or in the designation of points heretofore filed.

492 It is further agreed that this stipulation is to be printed by the Clerk as part of the records on appeal.

THURMAN ARNOLD,
Assistant Attorney General,

FRANK COLEMAN,
Special Assistant to the Attorney General,
Solicitors for the United States.

DANIEL W. KNOWLTON,
Chief Counsel,

NELSON THOMAS,
Attorney,
Solicitors for Interstate Commerce Commission.

M. E. ARONOFF,
GUS O. NATIONS,
Solicitors for N. E. Rosenblum Truck Lines, Inc.,
and J. B. Margolies.

[File endorsement omitted.]

[Endorsement on cover:] File No. 45319. E. Missouri, D. C. U. S. Term No. 52. The United States of American and Interstate Commerce Commission. Appellants, *vs.* N. E. Rosenblum Truck Lines, Inc. Filed April 21, 1941. Term No. 52 O. T. 1941.

No. 970 52

In the Supreme Court of the United States

OCTOBER TERM, 1940

THE UNITED STATES OF AMERICA AND INTERSTATE
COMMERCE COMMISSION, APPELLANTS

v.

N. E. ROSENBLUM TRUCK LINES, INC.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF MISSOURI

STATEMENT AS TO JURISDICTION

**In the District Court of the United States
for the Eastern District of Missouri,
Eastern Division**

CIVIL ACTION No. 599

**N. E. ROSENBLUM TRUCK LINES, INC., A CORPORATION,
PLAINTIFF**

v.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, DEFENDANTS

JURISDICTIONAL STATEMENT BY THE DEFENDANT-APPELLANTS UNDER RULE 12 OF THE REVISED RULES OF THE SUPREME COURT OF THE UNITED STATES

(Filed March 13, 1941)

The defendant-appellants respectfully present the following statement disclosing the basis upon which it is contended that the Supreme Court of the United States has jurisdiction upon appeal to review the final judgment or decree in the above-entitled cause sought to be reviewed:

A. Statutory provisions

The statutory provisions believed to sustain the jurisdiction are:

U. S. C., Title 28, Sec. 47a (Act of March 3, 1911, c. 231, Section 216, 36 Stat. 1150; as amended by

Urgent Deficiencies Act of October 22, 1913, c. 32, 38 Stat. 220).

U. S. C., Title 28, Section 41 (28) (Act of June 18, 1910, c. 309, 36 Stat. 539; as amended March 3, 1911, c. 231, Section 207, 36 Stat. 1148; October 22, 1913, c. 32, 38 Stat. 219).

U. S. C., Title 28, Section 44 (Act of October 22, 1913, c. 32, 38 Stat. 220; as amended by Act of February 13, 1925, c. 229, Section 1, 43 Stat. 938).

U. S. C., Title 28, Section 47 (Act of October 22, 1913, c. 32, 38 Stat. 220).

U. S. C., Title 28, Section 345 (Act of March 3, 1891, c. 517, Section 5, 26 Stat. 827; as amended January 20, 1897, c. 68, 29 Stat. 492; April 12, 1900, c. 191, Section 35, 31 Stat. 85; April 30, 1900, c. 339, Section 86, 31 Stat. 158; March 3, 1909, c. 269, Section 1, 35 Stat. 838; March 3, 1911, c. 231, Sections 238, 244, 36 Stat. 1157; January 28, 1915, c. 22, Section 2, 38 Stat. 804; February 13, 1925, c. 229, Section 1, 43 Stat. 938).

B. Date of the judgment or decree sought to be reviewed and the date upon which the application for appeal was presented

The decree sought to be reviewed was entered on January 20, 1941. The petition for appeal was presented on March 13, 1941, together with an assignment of errors.

C. Nature of cause and of rulings below

This is an appeal from a decree of the District Court of the United States for the Eastern Divi-

sion of the Eastern District of Missouri entered January 20, 1941, granting the prayer of a complaint which was filed in said court in the above-styled proceeding by the above-named plaintiff under and pursuant to the provisions of Section 41 (28) and Sections 43 to 48, inclusive, of Title 28, U. S. C.

Said complaint prayed that said District Court enjoin, set aside and annul an order of the Interstate Commerce Commission entered July 1, 1940, in proceedings entitled *N. E. Rosenblum Truck Lines, Inc. Contract Carrier Application*, No. MC 13853 (reported 24 M. C. C. 121), insofar as said order and its accompanying report found that the said applicant had failed to establish its right to a permit to operate as a contract carrier under the "grandfather" clause of Section 209 (a) of the Motor Carrier Act, 1935, and denied said application. The complaint filed in the above-named District Court alleged, among other things, that the Commission's said order was erroneous in law, and that in the light of the undisputed facts shown in evidence before the Commission, the plaintiff was and is entitled to a permit as aforesaid, and that by reason of the said order of the Commission the plaintiff would suffer great irreparable injury to its business.

The case was heard upon final hearing before a court of three judges organized pursuant to U. S. C. Title 28, Section 47 (Urgent Deficiencies Act of October 22, 1913, c. 32, 38 Stat. 220). A

transcript of all the evidence received before the Interstate Commerce Commission, duly certified by the Secretary of the Commission, was received in evidence before said court. Thereafter, on January 14, 1941, the court rendered its opinion holding that the prayer of the complaint should be granted, and made its findings of fact and conclusions of law, and on January 20, 1941, the court entered the final decree sought to be reviewed.

The questions presented by this appeal are substantial. They involve the duties and powers of the Interstate Commerce Commission with respect to the issuance of permits for contract carriers under the so-called "grandfather" clause of Section 209 of the Motor Carrier Act, 1935. They also involve the duties and functions of the District Court with regard to the weighing of evidence heard by the Interstate Commerce Commission in suits involving the validity of the action of the Commission in denying or granting applications for contract carrier permits under said "grandfather" clause.

D. Cases sustaining the Supreme Court's jurisdiction on appeal

United States v. Chicago, Milwaukee, St. Paul & Pacific R. R. Co., 294 U. S. 499.

United States v. Baltimore & Ohio R. R. Co., 293 U. S. 454.

Florida v. United States, 282 U. S. 194.

Beaumont, Sour Lake & Western Ry. Co. v. United States, 282 U. S. 74.

Ann Arbor Railroad Co. v. United States, 281 U. S. 658.

Louisville & Nashville R. R. Co. v. United States, 238 U. S. 1.

Interstate Commerce Commission v. Union Pacific Ry Co., 222 U. S. 541.

United States v. Maher, 307 U. S. 148.

El Decree and opinion of the District Court

Appended to this statement is a copy of the opinion of the District Court with its findings of fact and conclusions of law and a copy of the decree of said court sought to be reviewed.

We, therefore, respectfully submit that the Supreme Court of the United States has jurisdiction of the appeal.

Dated March 13, 1941.

Respectfully submitted.

↓ FRANCIS BIDDLE,
Solicitor General,

✓ HARRY C. BLANTON,
United States Attorney,

↓ THURMAN ARNOLD,
Assistant Attorney General,

↓ FRANK COLEMAN,
Special Assistant to the Attorney General,
For the United States of America.

↓ DANIEL W. KNOWLTON,
Chief Counsel,

↓ NELSON THOMAS,
Attorney,
For the Interstate Commerce Commission.

**In the District Court of the United States
for the Eastern Division of the Eastern
District of Missouri**

No. 599

N. E. ROSENBLUM TRUCK LINES, INC., A
CORPORATION, PLAINTIFF

v.

UNITED STATES OF AMERICA AND THE INTERSTATE
COMMERCE COMMISSION, DEFENDANTS

No. 601

J. B. MARGOLIES, AN INDIVIDUAL DOING BUSINESS AS
MANHATTAN TRUCK LINES, PLAINTIFF

v.

UNITED STATES OF AMERICA AND THE INTERSTATE
COMMERCE COMMISSION, DEFENDANTS

Appearances:

J. C. Hopewell, Esq., M. E. Arnoff, Esq., and
Gus. O. Nations, Esq., attorneys for plaintiffs.

Thurman Arnold, Assistant Attorney General,
Harry C. Blanton, United States Attorney, Dan-
iel W. Knowlton, Chief Counsel, Interstate Com-
merce Commission, Frank Coleman, Special
Assistant to the Attorney General, and Nelson

Thomas, Attorney, Interstate Commerce Commission, attorneys for defendants.

Before Joseph W. Woodrough, Circuit Judge, Charles B. Davis and George H. Moore, District Judges, on applications for injunctions.

The complainants sought Certificates of Convenience and Necessity or Permits before the Interstate Commerce Commission on the theory that on July 1, 1935, they were operating as contract carriers by motor vehicles, within the meaning of the Motor Carrier Act, 49 U. S. C. A. 303, over the route for which application was made, and had so operated since that time.

The Commission denied the applications. The complainants filed separate suits in the District Court to set aside the orders of the Commission. The cases were heard by a Court composed of three judges under the Motor Carrier Act, 49 U. S. C. A. 305 (h), and the Act providing for such a court, 28 U. S. C. A. 46, 47. The two cases were jointly argued and briefed, and will be so treated in this opinion. However, separate findings of fact and conclusions of law are being filed herewith, to which reference is made without extended restatement.

That orders of the nature here involved are reviewable in this Court has been determined in *United States v. Maher*, 307 U. S. 148. However, the judicial function is limited to an examination of the record to ascertain whether there is a sub-

stantial basis in the evidence for the conclusion of the Commission. *Rochester Telephone Corporation v. United States*, 307 U. S. 125.

The Act provides in substance that a contract carrier must secure a permit to operate, but if such carrier or his predecessor in interest were operating on July 1, 1935, over the route for which application is made, and have so operated since that time, the Commission shall issue the permit without further proceedings. Section 309 (a). The complainants sought to avail themselves of this privilege granted by the law. The question is Were they contract carriers on July 1, 1935, and have they so operated since that time?

The Interstate Commerce Commission held that the complainants were owner-operators, but were not contract carriers. As their conclusion is understood, it is based upon the theory that complainants merely provided trucks to common carriers, who in the course of operation had exclusive control and dominion of the same.

Smythe Contract Carrier Application, 22 M. C. C. 726, and Dixon Contract Carrier Application, 21 M. C. C. 617, are relied upon as supporting the orders entered in these cases. In the Smythe case the Commission stated the facts as follows:

Under the terms of the lease, which is verbal, the cartage company has complete control and supervision of applicant's equipment, and directs the movement thereof, the same as if the trucks were owned by it.

Such equipment is used exclusively in the service of the cartage company and is operated under its name. The upkeep and operating expenses and the drivers' wages are paid by applicant, the Cartage Company secures all traffic and pays applicant for the use of his equipment, 80 percent of its rate for the transportation performed. All bills of lading are issued by and in the name of the Cartage Company, which collects the transportation charges, is liable for loss and damage claims, and provides and pays for all insurance and State License tags or fees assessable in any States in which the vehicle is operated. All transactions with shippers are carried on in the name of the cartage company.

On this state of facts the Commission in that case denied a permit to the owner of the equipment.

The salient facts should be mentioned to determine whether the same situation exists in the cases now before the Court.

The complainants, prior to July 1, 1935, and thereafter, owned trucks on which they paid the vehicle license fees, which trucks were used by common carriers to transport freight between St. Louis and Chicago. The shipments went forward in the names of the common carriers, who supervised the loading and unloading of the trucks and collected the charges. Complainants were paid an amount for each trip, dependent upon the weight of the

load carried and the compensation derived from its carriage. Complainants carried fire, theft, and collision insurance on their equipment, and while public liability and cargo insurance were taken out in the first instance by the common carriers, the cost of such insurance was charged to the complainants. The cargo insurance covered only damage over the sum of \$100.00, and complainants agreed with the carriers to be responsible for damage under that sum, and were in some instances compelled to pay such losses. The drivers of the trucks were employees of complainants, who hired, paid, and discharged them. The complainants were free to take any route they chose between the designated points, and there were two or more routes available between the two cities. The common carriers exercised no control over the routing, except to request on occasions that drivers register at certain stations along the road. In some instances the complainants had a full load from one common carrier, and at other times they had fractional loads for one, two, or more carriers on the same truck on the same trip. At no time were the trucks of complainants in the exclusive service of any common carrier.

Under these circumstances were complainants Contract Carriers? The statute defines a contract carrier (49 U. S. C. A. 303):

The term "contract carrier by motor vehicle" means any person not included under

paragraph (14) of this section, who or which, under special and individual contracts or agreements, and whether directly or by a lease or any other arrangement, transports passengers or property in interstate or foreign commerce by motor vehicle for compensation.

The Act carries its own limitations. The section defining terms used excludes from the operation of the law, "the casual, occasional, or reciprocal transportation of passengers or property in interstate or foreign commerce for compensation by any person not engaged in transportation by motor vehicle as a regular occupation or business." Sec. 303 (b). Consequently one who occasionally furnishes equipment for interstate transportation does not come within the Act. It cannot be said that if permits are granted in these cases, they must be granted in every instance where on July 1, 1935, a person or corporation permitted his or its trucks to be used in interstate hauling. The person permitting his trucks to be used must have been engaged in the transportation business as a regular occupation or business. In these cases there is no question but that complainants qualify in this regard.

The defendants contend that the purpose of the "grandfather clause" in the Motor Carrier Act was to allow only those carriers who had been dealing with *shippers directly* on July 1, 1935, to continue their operations without a determination of convenience and necessity. The Act itself refutes

this argument, in that it recognizes that persons often act as brokers of motor transportation, and requires that such persons take out brokers' licenses. Although these persons deal directly with the shippers, they are not required to obtain common or contract carriers' licenses; on the contrary, the Act provides that the persons to whom the brokers turn over their business must have a carrier's license.

Section 303 (18), U. S. C. A. 49, provides:

The term "broker" means any person not included in the term "motor carrier" and not a bona fide employee or agent of any such carrier, who or which, as principal or agent, sells or offers for sale any transportation subject to this chapter, or negotiates for, or holds himself or itself out by solicitation, advertisement, or otherwise as one who sells, provides, furnishes, contracts, or arranges for such transportation.

Section 311 (b) provides for the issuance of licenses to brokers upon qualifying under the Act.

In thus recognizing that common and contract carriers need not contract directly with the shipping public, but that such ~~contracts~~ contracts may be made through third persons, such as brokers, Congress has shown a clear intention that licensing of carriers should not be affected by the fact that dealings were not had directly with shippers. Nothing in the statute indicates that a carrier must deal directly with the shipper in order to be entitled to a license under the Act.

In *United States v. Brooklyn Eastern Terminal*, 249 U. S. 396, it was held that the Terminal was a carrier though not organized or held out as such, and though it had not filed tariffs nor undertaken to transport property for all who applied, but merely carried freight as agent for certain railroads with which it had made special contracts. See also *United States v. California*, 297 U. S. 175; *Union Stock Yard & Transit Co. v. United States*, 308 U. S. 213, l. c. 220. It was not the method of fixing charges, nor the parties with which complainants contracted, but what they did, that characterized their undertaking.

The complainants transported freight in interstate commerce for compensation under agreements with common carriers. They actually engaged in the business of transportation. In so doing they provided the trucks and drivers, paid the license fees for using the highways, and assumed the responsibility for loss or damage to freight entrusted to them. This obligation they discharged both by carrying insurance and by payment of losses. The trucks were not used exclusively by any one common carrier, but by several. Even when called by one carrier, on some occasions the use of the trucks on the particular trip was not limited to the service of that carrier, but the freight of other carriers was transported in the same truck at the same time. These facts show that the control of the equipment was

in the hands of complainants, and not in the hands of the common carriers.

Complainants were, under the evidence, contract carriers on July 1, 1935, and have so operated since that time. Their status has not been changed by the subsequent extension of their business, as the statute does not restrict the right of the carrier to add to his or its equipment and facilities over the routes, between the termini or within the territory specified in the permit, as the development of the business and the demands of the public shall require. Sec. 309 (b).

The statute says if they transport freight under special agreements "directly or by a lease or any other arrangement" for compensation, they are contract carriers. This language is broad. Congress purposely so provided. It may be that the administrative process would be simpler had the statute been made to read otherwise. It might have been better to further limit the number of motor carriers, but this is not for the Court to say. Congress enacted the statute; it means what it says.

The conclusion seems inevitable that the common carriers did not have exclusive control of and dominion over the trucks of complainants while they were engaged in the transportation business, and that the conclusion of the Commission to that effect has no substantial basis in the evidence offered.

The prayer of the complaints will be granted to the extent of setting aside the orders entered. Judgments accordingly may be tendered for approval, signature, and entry.

(s) CHARLES B. DAVIS,

(s) GEO. H. MOORE,

United States District Judges.

(s) JOSEPH W. WOODROUGH,

United States Circuit Judge.

**In the District Court of the United States
for the Eastern Division of the Eastern
District of Missouri**

No. 599

**N. E. ROSENBLUM TRUCK LINES, INC., A CORPORATION,
PLAINTIFF**

v.

**UNITED STATES OF AMERICA AND THE INTERSTATE
COMMERCE COMMISSION, DEFENDANTS**

Before Joseph W. Woodrough, Circuit Judge,
Charles B. Davis and George H. Moore, District
Judges, on application for injunction.

FINDINGS OF FACT

1. That plaintiff, a corporation organized under the laws of Missouri, is successor in interest to N. E. Rosenblum, an individual heretofore doing business as N. E. Rosenblum Truck Lines. Plaintiff brings this action under Section 24 and 209 of the Judicial Code (28 U. S. C. A., Sections 41, 44, and 45) to review, enjoin, suspend, and set aside an order of the Interstate Commerce Commission entered on July 1, 1940, in a proceeding entitled MC-13853, N. E. Rosenblum Truck Lines, Inc., Contract Carrier Application, wherein applicant was denied a certificate of public convenience and necessity or a permit authorizing continuance of opera-

tions as a common or a contract carrier by motor vehicle of general commodities, in interstate or foreign commerce, between St. Louis, Mo., and Chicago, Ill., over certain specified routes.

2. That the Commission concluded from the evidence that: "It is clear from the record, and we so conclude, that applicants' equipment prior to February 1936 was operated solely under the direction and control of the common carriers and under the latter's responsibility to the general public and to the shippers. As to such operations, applicants do not qualify as carriers by motor vehicle within the meaning of the act and are consequently not entitled to a certificate or a permit under the 'grandfather' clause of section 206 (a) or 209 (a) thereof."

3. That said Rosenblum, prior to July 1, 1935, operated three tractor-trailer units as a regular occupation or business, hauling freight between the points in question for large truck companies, principally for Transamerican Freight Lines, Inc. Plaintiff introduced testimony that he had hauled for various other truck lines prior to that date, and the evidence of protestants to dispute this testimony showed only that he had hauled no freight for some of such other companies *after* July 1, 1935. In so hauling for said carriers, Rosenblum was paid a lump sum per trip on dock-to-dock movements. He carried fire, theft, and collision insurance on his equipment, while the

insurance on the cargo and public liability insurance were ordinarily taken out in the first instance by Transamerican or other carriers for which Rosenblum was working, the amount of such insurance being charged to and paid by Rosenblum. The cargo insurance covered only damage above the sum of \$100.00; and Rosenblum agreed with the common carrier to be responsible for damage under that sum, and was so held liable under that agreement in one instance. Drivers of the trucks were employees of Rosenblum, but the loading and unloading of trucks and sealing of trailers on each trip were handled by the common carriers. Expenses of maintenance and upkeep on the equipment, and costs of travel, were paid by Rosenblum. Registration on the trucks was obtained from the State authorities by Rosenblum. The latter was ordinarily free to take any route he chose between the designated points, and the common carrier exercised no control over the routing of his trucks, except to request that most of the trucks register at registration stations at certain points en route. Protestants' own witness testified that the common carrier did not usually designate the specific routes to be taken by Rosenblum's trucks. The common carriers called upon plaintiff to haul cargoes when traffic was heavy and extra trucks were needed to handle the business. In some instances Rosenblum carried half of a load for one carrier and half for another, or other fractional loads for

various carriers. The compensation to Rosenblum varied according to the particular load and the profits received by the common carrier.

4. That prior to July 1, 1935, and since that time, Rosenblum's equipment was operated principally under his own direction and control, and on his own responsibility.

CONCLUSIONS OF LAW

1. That this Court has jurisdiction to entertain plaintiff's petition to enjoin the enforcement of and set aside the order of the Interstate Commerce Commission of July 1, 1940, denying to plaintiff a certificate of convenience and necessity or a permit.

2. That plaintiff or its predecessor was in bona fide operation as a contract carrier in interstate commerce on July 1, 1935, over the routes for which application is made, and has so operated since that time; that plaintiff in so operating assumed control, management, and responsibility for the hauling of cargo.

3. That there is no substantial evidence in the record to support the order entered, and that plaintiff is entitled to an order enjoining, suspending, and setting aside the order of the Interstate Commerce Commission.

(s) JOSEPH W. WOODROUGH,
United States Circuit Judge.

(s) CHARLES B. DAVIS,
(s) GEO. H. MOORE,
United States District Judges.

**In the District Court of the United States
for the Eastern Division of the Eastern
District of Missouri**

No. 599

**N. E. ROSENBLUM TRUCK LINES, INC., A CORPORATION,
PLAINTIFF**

v.

**UNITED STATES OF AMERICA AND THE INTERSTATE
COMMERCE COMMISSION, DEFENDANTS**

Before Hon. Joseph W. Woodrough, United States Circuit Judge, Hon. Charles B. Davis, United States District Judge, and Hon. George H. Moore, United States District Judge, sitting as the District Court of the United States for the Eastern District of Missouri, pursuant to the provisions of Sections 208 and 209 of the Judicial Code, 28 U. S. C. A. 44, 45, and 47.

FINAL DECREE AND JUDGMENT

This cause came on for hearing on the complaint of the plaintiff on December 9, 1940, when the plaintiff appeared by its solicitors of record, the United States of America and the Interstate Commerce Commission appeared by their respective solicitors of record, and, the transcript of proceedings and evidence had and presented be-

fore the Interstate Commerce Commission on plaintiff's application to the Commission for a permit to continue in business as a contract carrier of freight by motor vehicle, was by the plaintiff offered in evidence, the defendant admitting that said transcript contained a complete record of all the evidence presented therein before the Interstate Commerce Commission, and the cause was presented by the parties to the Court for determination, under the pleadings filed and the proof then adduced and the arguments of the parties, as well as briefs thereafter filed by the parties.

And, the Court being fully advised in the premises, and having filed herein on January 14, 1941, its findings of fact and conclusions of law as well as its written opinion holding that there is no substantial evidence in the record of proceedings before the Interstate Commerce Commission to support the findings and conclusions on which the order of the Commission is based, and that the Commission by said order erred in its conclusion of fact and in the application of the controlling law, and that because of said erroneous finding, conclusion, and order the plaintiff is entitled to have said order enjoined, annulled, and set aside; now,

THEREFORE, IT IS ADJUDGED AND DECREED that the order of the Interstate Commerce Commission made July 1, 1940, in the proceeding before said Commission entitled "No. MC-13853, N. E. Rosen-

blum Truck Lines, Inc., Contract Carrier Application, St. Louis, Missouri," denying the application of N. E. Rosenblum Truck Lines, Inc., for a certificate or permit as a contract carrier, be, and it is hereby, annulled and set aside, the defendants are enjoined from enforcing or attempting to enforce said order.

Done this 20th day of January 1941.

For the Court:

GEO. H. MOORE,
Judge.



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No. ~~974~~ 53

In the Supreme Court of the United States

OCTOBER TERM, 1940

THE UNITED STATES OF AMERICA AND INTERSTATE
COMMERCE COMMISSION, APPELLANTS

v.

J. B. MARGOLIES, AN INDIVIDUAL DOING BUSINESS AS
MANHATTAN TRUCK LINES

APPEAL FROM THE DISTRICT COURT OF THE UNITED
STATES FOR THE EASTERN DISTRICT OF MISSOURI

STATEMENT AS TO JURISDICTION

**In the District Court of the United States
for the Eastern District of Missouri,
Eastern Division**

CIVIL ACTION No. 601

**J. B. MARGOLIES, AN INDIVIDUAL DOING BUSINESS AS
MANHATTAN TRUCK LINES, PLAINTIFF**

v.

**THE UNITED STATES OF AMERICA AND INTERSTATE
COMMERCE COMMISSION, DEFENDANTS**

**JURISDICTIONAL STATEMENT BY THE DEFENDANT-
APPELLANTS UNDER RULE 12 OF THE REVISED RULES
OF THE SUPREME COURT OF THE UNITED STATES**

(Filed Mar. 13, 1941)

The defendant-appellants respectfully present the following statement disclosing the basis upon which it is contended that the Supreme Court of the United States has jurisdiction upon appeal to review the final judgment or decree in the above-entitled cause sought to be reviewed:

A. Statutory Provisions

The statutory provisions believed to sustain the jurisdiction are:

U. S. C., title 28, Sec. 47a (Act of March 3, 1911, c. 231, Section 210, 36 Stat. 1150; as amended

by Urgent Deficiencies Act of October 22, 1913, c. 32, 38 Stat. 220).

U. S. C., Title 28, Section 41 (28) (Act of June 18, 1910, c. 309, 36 Stat. 539; as amended March 3, 1911, c. 231, Section 207, 36 Stat. 1148; October 22, 1913, c. 32, 38 Stat. 219).

U. S. C., Title 28, Section 44 (Act of October 22, 1913, c. 32, 38 Stat. 220; as amended by Act of February 13, 1925, c. 229, Section 1, 43 Stat. 938).

U. S. C., Title 28, Section 47 (Act of October 22, 1913, c. 32, 38 Stat. 220).

U. S. C., Title 28, Section 345 (Act of March 3, 1891, c. 517, Section 5, 26 Stat. 827; as amended January 20, 1897, c. 68, 29 Stat. 492; April 12, 1900, c. 191, Section 35, 31 Stat. 85; April 30, 1900, c. 339, Section 86, 31 Stat. 158; March 3, 1909, c. 269, Section 1, 35 Stat. 838; March 3, 1911, c. 231, Sections 238, 244, 36 Stat. 1157; January 28, 1915, c. 22, Section 2, 38 Stat. 804; February 13, 1925, c. 229, Section 1, 43 Stat. 938).

B. Date of the Judgment or Decree Sought To Be Reviewed and the Date Upon Which the Application for Appeal Was Presented

The decree sought to be reviewed was entered on January 20, 1941. The petition for appeal was presented on March 13, 1941, together with an assignment of errors.

C. Nature of Cause and of Rulings Below

This is an appeal from a decree of the District Court of the United States for the Eastern Divi-

sion of the Eastern District of Missouri entered January 20, 1941, granting the prayer of a complaint which was filed in said court in the above-styled proceeding by the above-named plaintiff under and pursuant to the provisions of Section 41 (28) and Sections 43 to 48, inclusive, of Title 28, U. S. C.

Said complaint prayed that said District Court enjoin, set aside, and annul an order of the Interstate Commerce Commission entered July 1, 1940, in proceedings entitled *Jacob B. Margolies Contract Carrier Application*, No. MC 36692 (reported 24 M. C. C. 121), insofar as said order and its accompanying report found that the said applicant had failed to establish its right to a permit to operate as a contract carrier under the "grandfather" clause of Section 209 (a) of the Motor Carrier Act, 1935, and denied said application. The complaint filed in the above-named District Court alleged, among other things, that the Commission's said order was erroneous in law, and that in the light of the undisputed facts shown in evidence before the Commission, the plaintiff was and is entitled to a permit as aforesaid, and that by reason of the said order of the Commission the plaintiff would suffer great irreparable injury to its business.

The case was heard upon final hearing before a court of three judges organized pursuant to U. S. C. Title 28, Section 47 (Urgent Deficiencies Act of October 22, 1913, c. 32, 38 Stat. 220). A transcript

of all the evidence received before the Interstate Commerce Commission, duly certified by the Secretary of the Commission, was received in evidence before said court. Thereafter, on January 14, 1941, the court rendered its opinion holding that the prayer of the complaint should be granted, and made its findings of fact and conclusions of law, and on January 20, 1941, the court entered the final decree sought to be reviewed.

The questions presented by this appeal are substantial. They involve the duties and powers of the Interstate Commerce Commission with respect to the issuance of permits for contract carriers under the so-called "grandfather" clause of Section 209 of the Motor Carrier Act, 1935. They also involve the duties and functions of the District Court with regard to the weighing of evidence heard by the Interstate Commerce Commission in suits involving the validity of the action of the Commission in denying or granting applications for contract carrier permits under said "grandfather" clause.

D. Cases Sustaining the Supreme Court's Jurisdiction on Appeal

United States v. Chicago, Milwaukee, St. Paul & Pacific R. R. Co., 294 U. S. 499.

United States v. Baltimore & Ohio R. R. Co., 293 U. S. 454.

Florida v. United States, 282 U. S. 194.

Beaumont, Sour Lake & Western Ry. Co. v. United States, 282 U. S. 74.

Ann Arbor Railroad Co. v. United States, 281 U. S. 658.

Louisville & Nashville R. R. Co. v. United States, 238 U. S. 1.

Interstate Commerce Commission v. Union Pacific Ry. Co., 222 U. S. 541.

United States v. Maher, 307 U. S. 148.

E. Decree and Opinion of the District Court

Appended to this statement is a copy of the opinion of the District Court with its findings of fact and conclusions of law and a copy of the decree of said court sought to be reviewed.

We, therefore, respectfully submit that the Supreme Court of the United States has jurisdiction of the appeal.

Dated MARCH 12, 1941.

Respectfully submitted.

↓ FRANCIS BIDDLE,
Solicitor General,

↓ HARRY C. BLANTON,
United States Attorney,

↓ THURMAN ARNOLD,
Assistant Attorney General,

↓ FRANK COLEMAN,
Special Assistant to the Attorney General,
For the United States of America.

DANIEL W. KNOWLTON,
Chief Counsel,

↓ NELSON THOMAS,
Attorney,

For the Interstate Commerce Commission.

The opinion of the District Court is printed as an appendix to the Jurisdictional Statement in the case of *United States v. N. E. Rosenblum Truck Lines, Inc.*, No. 970, October Term, 1940, and is not repeated here.

**In the District Court of the United States
for the Eastern Division of the Eastern
District of Missouri**

No. 601

**J. B. MARGOLIES, AN INDIVIDUAL DOING BUSINESS AS
MANHATTAN TRUCK LINES, PLAINTIFF**

v.

**UNITED STATES OF AMERICA AND THE INTERSTATE
COMMERCE COMMISSION, DEFENDANTS**

Before Joseph W. Woodrough, Circuit Judge,
Charles B. Davis and George H. Moore, District
Judges, on application for injunction.

FINDINGS OF FACT

1. That plaintiff, a resident of Missouri, is successor in interest to Truman E. Baulos, an individual heretofore doing business as the Truman E. Baulos Truck Lines. Plaintiff brings this action under Sections 24 and 209 of the Judicial Code (28 U. S. C. A., Sections 41, 43, 44, and 45) to review, enjoin, suspend, and set aside an order of the Interstate Commerce Commission entered on July 1, 1940, in a proceeding entitled MC 36692, Jacob B. Margolies (Successor in Interest to Truman E. Baulos), Contract Carrier Application, wherein applicant was denied a certificate of public convenience and necessity or a permit authorizing con-

tinuance of operations as a common or a contract carrier by motor vehicle of general commodities, in interstate or foreign commerce, between St. Louis, Mo., and Chicago, Ill., over three specified routes.

2. That the Commission concluded from the evidence that: "It is clear from the record, and we so conclude, that applicants' equipment prior to February 1936 was operated solely under the direction and control of the common carriers and under the latter's responsibility to the general public and to the shippers. As to such operations, applicants do not qualify as carriers by motor vehicle within the meaning of the act and are consequently not entitled to a certificate or a permit under the 'grandfather' clause of section 206 (a) or 209 (a) thereof."

3. That Baulos, prior to July 1, 1935, was employed as office manager and dispatcher for E. H. Hoffmann Lines, Inc., a motor carrier operating between St. Louis and Chicago. Later, in October 1935, Baulos was employed by Be-Mac Transport Company, Inc., as its Chicago office manager, on a salary basis, and from that time until February 1936 he operated vehicles for that company under arrangements similar to those formerly had with the Hoffmann company. While employed by Hoffmann, Baulos acquired three tractor-trailer units prior to July 1, 1935, and transported freight as a regular occupation or business between the points in question principally for the Hoffmann company, at a truckload price per trip. There was some

evidence of similar transportation for Be-Mac, Ill.-Mo. and Transamerican Freight Lines, Inc. Fire, theft and collision insurance on the tractor-trailer units was taken out by Baulos, and public liability and property-damage insurance was either taken out by the common carrier and charged to the account of Baulos, as shown in the exhibits, or was handled by the finance company through which Baulos arranged the purchase of his equipment. The evidence did not show which party carried cargo insurance, the witness testifying that this was the subject of a lawsuit at the time. Baulos testified that he at all times had complete control and supervision of the trucks and the drivers. This was not disputed insofar as the Hoffmann company was concerned, though a witness from Be-Mac testified that the latter exercised such control over trucks operated for them by Baulos. On numerous occasions prior to July 1, 1935, as well as subsequent thereto, Baulos carried fractional truck loads for the Hoffmann company, filling out the loads with cargo for other companies. Registration on the tractor-trailer units was taken out with the state authorities by Baulos. Drivers of the trucks were employees of Baulos, who paid their salaries, as well as all expenses of maintenance and upkeep on the equipment and costs of travel. The usual compensation to Baulos was \$30.00 gross for a one-way trip between the points, but this was subject to change on any particular trip, depending on the weight of the load and the profits.

4. That prior to July 1, 1935, and since that time, Baulos' equipment was operated principally under his own direction and control, and on his own responsibility.

CONCLUSIONS OF LAW

1. That this Court has jurisdiction to entertain plaintiff's petition to enjoin the enforcement of and to set aside the order of the Interstate Commerce Commission of July 1, 1940, denying the plaintiff a certificate of convenience and necessity or permit.

2. That plaintiff or its predecessor was in bona fide operation as a contract carrier in interstate commerce on July 1, 1935, over the routes for which application is made, and has so operated since that time; that plaintiff in so operating assumed control, management, and responsibility for the hauling of cargo.

3. That there is no substantial evidence in the record to support the order entered, and that plaintiff is entitled to an order enjoining, suspending, and setting aside the order of the Interstate Commerce Commission.

(s) J. W. WOODROUGH,
United States Circuit Judge.

(s) CHARLES B. DAVIS,

(s) GEO. H. MOORE,
United States District Judges.

**In the District Court of the United States
for the Eastern Division of the Eastern
District of Missouri**

No. 601

**J. B. MARGOLIES, AN INDIVIDUAL DOING BUSINESS AS
MANHATTAN TRUCK LINES, PLAINTIFF**

v.

**UNITED STATES OF AMERICA AND THE INTERSTATE
COMMERCE COMMISSION, DEFENDANTS**

Before Hon. Joseph W. Woodrough, United States Circuit Judge, Hon. Charles B. Davis, United States District Judge, and Hon. George H. Moore, United States District Judge, sitting as the District Court of the United States for the Eastern District of Missouri, pursuant to the provisions of Sections 208 and 209 of the Judicial Code, 28 U. S. C. A. 44, 45, and 47.

FINAL DECREE AND JUDGMENT

This cause came on for hearing on the complaint of the plaintiff on December 9, 1940, when the plaintiff appeared by its solicitors of record, the United States of America and the Interstate Commerce Commission appeared by their respective solicitors of record, and, the transcript of proceed-

ings and evidence had and presented before the Interstate Commerce Commission on plaintiff's application to the Commission for a permit to continue in business as a contract carrier of freight by motor vehicle, was by the plaintiff offered in evidence, the defendant admitting that said transcript contained a complete record of all the evidence presented therein before the Interstate Commerce Commission, and the cause was presented by the parties to the Court for determination, under the pleadings filed and the proof then adduced and the arguments of the parties, as well as briefs thereafter filed by the parties.

And, the Court being fully advised in the premises, and having filed herein on January 14, 1941, its findings of fact and conclusions of law as well as its written opinion holding that there is no substantial evidence in the record of proceedings before the Interstate Commerce Commission to support the findings and conclusions on which the order of the Commission is based, and that the Commission by said order erred in its conclusion of fact and in the application of the controlling law, and that because of said erroneous finding, conclusion, and order the plaintiff is entitled to have said order enjoined, annulled, and set aside; now,

THEREFORE, IT IS ADJUDGED AND DECREED that the order of the Interstate Commerce Commission made July 1, 1940, in the proceeding before said Commission entitled "No. MC-36692, Jacob B.

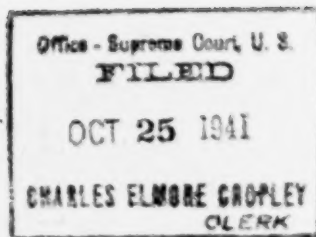
Margolies, Contract Carrier Application, St. Louis, Missouri," denying the application of Jacob B. Margolies, doing business as Manhattan Truck Lines, for a certificate or permit as a contract carrier be and it hereby is annulled and set aside, and defendants are enjoined from enforcing or attempting to enforce said order.

Done this 20th day of January 1941.

For the Court:

GEO. H. MOORE, *Judge.*

FILE COPY



Nos. 52 and 53

In the Supreme Court of the United States

OCTOBER TERM, 1941

THE UNITED STATES OF AMERICA AND INTERSTATE
COMMERCE COMMISSION, APPELLANTS

v.

N. E. ROSENBLUM TRUCK LINES, INC. &

THE UNITED STATES OF AMERICA AND INTERSTATE
COMMERCE COMMISSION, APPELLANTS

v.

J. B. MARGOLIES, AN INDIVIDUAL DOING BUSINESS
AS MANHATTAN TRUCK LINES

APPEALS FROM THE DISTRICT COURT OF THE UNITED
STATES FOR THE EASTERN DISTRICT OF MISSOURI

BRIEF FOR THE UNITED STATES AND THE INTERSTATE
COMMERCE COMMISSION

INDEX

	Page
Opinions below.....	1
Jurisdiction.....	2
Question presented.....	2
Statutes involved.....	3
Statement.....	3
Specifications of errors to be urged.....	9
Summary of argument.....	10
Argument.....	11
I. The construction of the statute adopted by the court below is contrary to the settled administrative construction and is not in accord with the statutory scheme.....	14
A. The statute does not contemplate that multiple grandfather rights shall be granted on the basis of a single transportation service.....	14
B. Appellees cannot claim to be contract carriers because their operations on July 1, 1935, were integral parts of common carrier systems....	18
II. The Commission's determination that appellees were not carriers is correct and supported by substantial evidence.....	23
Conclusion.....	28
Appendix.....	29

CITATIONS

Cases:

<i>B-Line Motor Freight</i> , 20 M. C. C. 538.....	24
<i>Brady Transfer & Storage Co.</i> , 23 M. C. C. 767.....	24
<i>Brown</i> , 26 M. C. C. 399.....	25
<i>Campbell</i> , 24 M. C. C. 281.....	25
<i>Columbus & Chicago Motor Freight, Inc.</i> , 26 M. C. C. 768....	25
<i>Columbia Terms Co.</i> , 18 M. C. C. 662.....	24
<i>Davis</i> , 23 M. C. C. 349.....	25
<i>Day</i> , 23 M. C. C. 715.....	24
<i>Dick's Transfer & Truck Term.</i> , 20 M. C. C. 785.....	22
<i>Dirie Ohio Exp. Co.</i> , 17 M. C. C. 735.....	23
<i>Dizon</i> , 21 M. C. C. 617.....	17
<i>Eakin</i> , 26 M. C. C. 339.....	25
<i>Galveston Truck Line Corp.</i> , 22 M. C. C. 451.....	24

Cases—Continued.

	Page
<i>Highway Motor Freight Lines, Inc.</i> , 23 M. C. C. 621.....	24
<i>Hoerman</i> , 26 M. C. C. 706.....	25
<i>Hoerman v. United States</i> , W. D. Mo., June 10, 1941.....	25
<i>Hoffman</i> , 24 M. C. C. 376.....	25
<i>Inland Motor Freight, Inc.</i> , 24 M. C. C. 293.....	25
<i>Johnson v. United States</i> , D. Ore., Sept. 1941.....	25
<i>Kaplan Trucking Co.</i> , 21 M. C. C. 691.....	24
<i>Kline</i> , 26 M. C. C. 741.....	18
<i>Los Angeles-Seattle M. Exp., Inc.</i> , 24 M. C. C. 141.....	24
<i>Lubetich v. United States</i> , W. D. Wash., June 10, 1941, now on appeal to this Court, No. 322.....	25
<i>J. Miller Co.</i> , 23 M. C. C. 421.....	24
<i>Mississippi Valley Barge Line Co. v. United States</i> , 292 U. S. 282.....	25
<i>Mobile Exp., Inc.</i> , 24 M. C. C. 254.....	25
<i>M. Moran Transp. Lines, Inc.</i> , 23 M. C. C. 139.....	24
<i>Nixon</i> , 26 M. C. C. 325.....	25
<i>O. L. D. Forwarding Corp.</i> , 26 M. C. C. 481.....	25
<i>O'Malley v. United States</i> , (D. Minn.) 38 F. Supp. 1.....	25
<i>Puzio</i> , 26 M. C. C. 555.....	25
<i>Riss & Co., Inc.</i> , 21 M. C. C. 521.....	24
<i>Rochester Tel. Corp. v. United States</i> , 307 U. S. 125.....	25
<i>N. E. Rosenblum Truck Lines, Inc.</i> , 24 M. C. C. 121.....	24
<i>Schiller</i> , 24 M. C. C. 127.....	24
<i>Schreiber</i> , 26 M. C. C. 723.....	25
<i>Scott Bros., Inc.</i> , 2 M. C. C. 155, 4 M. C. C. 551.....	21, 22
<i>Shea</i> , 26 M. C. C. 419.....	25
<i>Smythe</i> , 22 M. C. C. 726.....	17
<i>Stephenson v. Binford</i> , 287 U. S. 251.....	20
<i>Sunset Motor Lines, Inc.</i> , 22 M. C. C. 113.....	24
<i>Swayne & Hoyt, Ltd., v. United States</i> , 300 U. S. 297.....	26
<i>Tips</i> , 18 M. C. C. 85.....	24
<i>United States v. American Trucking Ass'ns</i> , 310 U. S. 534.....	25
<i>Warehouse Co. v. United States</i> , 283 U. S. 501.....	27
<i>Weish</i> , 23 M. C. C. 404.....	24

Statutes:

<i>Interstate Commerce Act, Part II, Section 205 (g)</i>	2
<i>Motor Carrier Act, 1935, Section 205 (h), 49 Stat. 543,</i> <i>49 U. S. C., Sec. 305 (h)</i>	2
<i>Sec. 203 (a) (14)</i>	30
<i>Sec. 203 (a) (15)</i>	12, 29
<i>Sec. 203 (a) (17)</i>	31
<i>Sec. 203 (a) (19)</i>	31
<i>Sec. 209 (a)</i>	11, 31
<i>Sec. 218 (b)</i>	21

In the Supreme Court of the United States

OCTOBER TERM, 1941

No. 52

THE UNITED STATES OF AMERICA AND INTERSTATE
COMMERCE COMMISSION, APPELLANTS

v.

N. E. ROSENBLUM TRUCK LINES, INC.

No. 53

THE UNITED STATES OF AMERICA AND INTERSTATE
COMMERCE COMMISSION, APPELLANTS

v.

J. B. MARGOLIES, AN INDIVIDUAL DOING BUSINESS
AS MANHATTAN TRUCK LINES

APPEALS FROM THE DISTRICT COURT OF THE UNITED
STATES FOR THE EASTERN DISTRICT OF MISSOURI

BRIEF FOR THE UNITED STATES AND THE INTERSTATE
COMMERCE COMMISSION

OPINIONS BELOW

The single opinion of the specially constituted
district court (R. 15-19) is reported in 36 F.

Supp. 467. The single report of the Interstate Commerce Commission (R. 5-10) is published in 24 M. C. C. 121.

JURISDICTION

The final decree of the district court in each of these two cases was entered January 20, 1941 (R. 22-23, 39). Petitions for appeal were filed March 13, 1941 and were allowed the same day (R. 25-26, 42). The jurisdiction of this Court is invoked under the Urgent Deficiencies Act of October 22, 1913 (39 Stat. 208, 28 U. S. C., Secs. 47 and 47 (a)); Section 238 of the Judicial Code, as amended by the Act of February 13, 1925 (43 Stat. 936, 28 U. S. C., Sec. 345); and by the Motor Carrier Act of 1935, Section 205 (h)¹ (49 Stat. 543, 49 U. S. C., Section 305 (h)).

QUESTION PRESENTED

Whether the truck operations in which appellees were separately engaged on July 1, 1935 were those of "contract carriers by motor vehicle" as defined by the Motor Carrier Act of 1935, entitling them to permits from the Interstate Commerce Commission to operate as such carriers under the "grandfather" proviso of Section 209 (a) of the Act.

¹ This statute was applicable on July 1, 1940, the date of the Commission's order. The Transportation Act of 1940, 54 Stat. 899, approved September 18, 1940, re-arranged this provision, without change, as Interstate Commerce Act, Part II, Section 205 (g).

STATUTES INVOLVED

The pertinent provisions of the Motor Carrier Act of 1935, applicable at the date of the Commission's order, July 1, 1940, are set forth in the Appendix, *infra*, pp. 29-32. Changes made in these provisions by the Transportation Act of 1940, approved September 18, 1940, are noted.

STATEMENT

These are direct appeals by the United States and the Interstate Commerce Commission from final decrees of a specially constituted district court, convened pursuant to the Urgent Deficiencies Act of 1913, which sustained appellees' separate petitions to annul, set aside and enjoin an order of the Interstate Commerce Commission entered July 1, 1940. The order (R. 204) denied appellees' separate applications under the "grandfather" proviso of Section 209 (a) of the Motor Carrier Act of 1935, for a permit authorizing operations as a contract carrier by motor vehicle.²

² Appellees' applications were separately heard by the Interstate Commerce Commission. However, throughout the proceedings resulting in these two appeals, it has been recognized by the parties, the Commission and the district court that the issues of fact and law presented in the two cases are identical. The Commission entered one order (R. 204) and issued one report (R. 5-10) jointly disposing of both applications. Appellants filed separate actions in the district court to annul and set aside this order (R. 1, 28) but a joint final hearing on the two petitions was held by the district court (R. 15). The court entered separate decrees,

The only portion of the evidence presented to the Commission on these applications which is pertinent here is that which described the nature of the operation in which appellees were engaged on and before July 1, 1935.³ These evidentiary facts are not in substantial dispute. The evidence disclosed that it is a customary practice of common carriers by motor vehicle to augment their own road unit supply by engaging extra trucks under lease or other arrangement from time to time to handle overflow traffic (R. 98, 103). Often not only the trucks but the owner-drivers were engaged to supplement the carrier's own equipment (R. 239-240). The operators of equipment thus engaged were known in the industry as "owner-operators."

Appellees on July 1, 1935 and until February 1936 were engaged in supplying and operating such equipment under arrangements with "repu-

findings, and conclusions, but filed a single opinion covering both cases. In this court the records on the separate appeals from the two final decrees have been printed in a single volume.

³ In both of these cases it was the appellee's predecessor in interest who was operating on July 1, 1935. The predecessor of the appellee in No. 52, N. E. Rosenblum Truck Lines, Inc., was Rosenblum, the individual (R. 203, 204), and the predecessor of appellee in No. 53, J. B. Margolies, was an individual, Baulos (R. 301).

For the purposes of these appeals, this change in interest is unimportant and, for convenience, these predecessor operations will be referred to as appellees' operations.

table" common carriers by motor vehicle operating between Chicago and St. Louis (Report, R. 6; R. 51). In each case only three tractor-trailer units were being so supplied and in each case principally to a single common carrier (Report, R. 6, 8). Prior to February 1, 1936 appellees hauled for no shippers, but exclusively for common carriers (R. 51, 75, 215).

The preponderant portion of the traffic of the common carrier with which appellees did most of their business was transported from consignor to consignee in its own vehicles (R. 98) but appellees' equipment was secured to handle overflow freight (R. 98). The freight so transported was in every instance solicited from the shipper by the common carrier (Report, R. 7; R. 99, 109) and the bills of lading were issued by the common carrier (R. 103, 109). The freight moved from consignor to consignee on the common carrier's way bills (R. 99, 108) and was delivered on the delivery receipts of the common carrier (R. 100, 108).

The freight so transported moved between the common carrier's terminals, that is between its dock in Chicago and its dock in St. Louis (R. 99, 100). Except in certain instances of full truck loads (R. 99), this freight was collected from the shippers in the common carrier's pick-up trucks, and accumulated at its dock. Employees of the common carrier loaded and unloaded the trucks and sealed the trailers (R. 67) and then the

freight was moved in appellees' equipment to the other terminals. There it was delivered to the consignee in the common carrier's delivery trucks (R. 100).

Arrangements for the movements were by oral contract (R. 52, 223). Appellees were paid a lump sum per trip on dock-to-dock movements (Report, R. 6, 8). This approximated sixty dollars a round trip or thirty dollars per trailer-load between Chicago and St. Louis (R. 223). Settlements were ordinarily made on a semi-monthly basis for one appellee and on a bi-monthly basis for the other (R. 69, 223).

In conducting the described operations, appellees protected their equipment by covering it with fire, theft and collision insurance in their own names (Report, R. 7, R. 67). Appellees operated the equipment, took care of it, bought the gasoline, the tires, the oil, kept it in repair, and hired the drivers (R. 53). The record does not disclose whether appellees' trucks bore the name of the common carrier when operated in its behalf and whether, or in whose name, the vehicles were registered with the state authorities (Report, R. 10). Cargo, public liability, property damage and like insurance for the protection of the general and shipping public were carried by the common carrier (Report, R. 7, R. 101). In some instances the cost of the latter types of insurance were charged to appellees and on occasion small cargo damage

claims were charged to them by the common carrier (Report, R. 7, R. 101-102).

The evidence leaves some doubt as to the exact amount of control exercised by the common carrier over appellees' drivers (R. 102-103). One common carrier testified that the "drivers are, under our direction" (R. 108). The common carrier directed the routes generally to be followed by the drivers, required them to "sign in" the registration stations along the route and directed the departure and time of arrival at destination (R. 102-103, 108).

Appellees' separate operations differed only in two particulars. The predecessor of the appellee in No. 53 submitted in evidence copies of written contracts between him and two shippers, providing for the transportation of various commodities (R. 213, 215). Although the contracts were in his name, freight moving thereunder was transported on the billing of the common carrier and the shippers paid the latter for the services rendered. The predecessor was paid on the trip basis in the same manner as previously described (R. 215, 223). The second particular in which the two operations differed was that the predecessor of the appellee in No. 53 was an office manager and dispatcher for the common carrier to whom he was supplying equipment on the "grandfather" date (R. 227). On the basis of this second circum-

stance the Commission found that appellee's predecessor had merely acted as the agent of his employer, the common carrier, when he took the contracts in his own name (R. 8).

After February 1936 appellees completely changed their methods of operation. They ceased hauling for common carriers and began hauling for individual shippers in their own right (R. 74, 219).

From the foregoing facts the Commission found that the applicants' equipment prior to February 1936 "was operated solely under the direction and control of the common carriers and under the latter's responsibility to the general public and to the shippers" (R. 10), and concluded that "as to such operations, applicants do not qualify as carriers by motor vehicle within the meaning of the Act and are consequently not entitled to a certificate or a permit under the 'grandfather' clause of Section 206 (a) or 209 (a) thereof" (R. 10). An order was entered jointly denying the applications (R. 204).

On October 8, 1940 appellees filed their separate petitions seeking to have the Commission's order set aside (R. 1, 28). The two cases were heard together by the court below on December 9, 1940 (R. 22, 39). The evidence consisted of the evidence before the Commission (R. 23). On January 14, 1941, the court filed a single opinion covering both cases (R. 15-19), and on the same day filed

separate but identical findings and conclusions (R. 20-22) (R. 36-38), and separate, but identical decrees, setting aside the Commission's order (R. 22-23, 39). It concluded in both cases that appellees were in "bona fide operation as a contract carrier in interstate commerce on July 1, 1935," and "in so operating assumed control, management and responsibility for the hauling of cargo" and that "there is no substantial evidence in the record to support the order entered" (R. 22, 38).

SPECIFICATION OF ERRORS TO BE URGED

The district court erred in both cases:

1. In weighing the evidence heard by the Commission and making independent findings of fact instead of limiting its consideration to the question of whether the Commission's order is supported by substantial evidence.

2. In failing to find that the facts stated in the Commission's report were supported by substantial evidence in the Commission record and that the findings of the Commission were sufficient in law to support its order.

3. In concluding, as stated in the second paragraph of the court's "Conclusions of Law," that "the plaintiff or its predecessor was in bona fide operation as a contract carrier in interstate commerce on July 1, 1935, over the routes for which application is made, and has so operated since that time; that plaintiff in so operating assumed con-

trol, management, and responsibility for the hauling of cargo."

4. In concluding, as stated in the third paragraph of the court's "Conclusions of Law," that "there is no substantial evidence in the record to support the order entered, and that the plaintiff is entitled to an order enjoining, suspending, and setting aside the order of the Interstate Commerce Commission."

5. In setting aside the Commission's order.

SUMMARY OF ARGUMENT

The grandfather clause of the Motor Carrier Act of 1935 was designed to permit the continuance of all common carrier operations in existence on June 1, 1935, and all contract carrier operations in existence on July 1, 1935. The plain intent of the statute is that a particular carrier operation shall only support a single operating authority based upon that operation. Frequently, in cases such as this, the Commission is compelled to determine which of several claimants was the actual carrier. In the instant case the Commission determined that the common carriers employing appellees' services and equipment were the "carriers" on the grandfather date and that, therefore, appellees could not claim grandfather rights for their operations at that time.

In any event, appellees could not be granted a permit because their claim for grandfather rights was based upon the assertion that they had performed under contract an integral part of the

common carrier operation. The statute and numerous decisions of the Commission plainly demonstrate that performance of a part of a common carrier operation is incompatible with contract carrier status.

In determining that appellees were not the carriers on the grandfather date, the Commission adopted a proper rule of determination, i. e., under whose direction and control and under whose responsibility to the general public and to the shipper were the operations conducted. Having determined that issue adversely to appellees upon the basis of substantial evidence, the Commission's determination should be sustained. The District Court, in reviewing the Commission's findings, not only misconstrued the statute but adopted an improper rule of judicial review, thus usurping the administrative function.

ARGUMENT

Section 209 (a) of the Act, provides that no person shall engage in the business of a "contract carrier by motor vehicle" in interstate commerce without a permit issued by the Commission authorizing such person to engage in such business. However, a "grandfather" proviso declares that if a carrier "was in bona fide operation as a contract carrier by motor vehicle on July 1, 1935 . . . and has so operated since that time," the Commission shall issue such permit without requiring proof that the issuance of the permit

would be consistent with the public interest and with the policy declared in the Act.

Appellees based their claim to permits to operate as contract carriers on the contention that, since they were admittedly hauling freight on July 1, 1935, under agreements with common carriers, they came within the literal definition of a contract carrier on the effective "grandfather" date.¹ The Commission concluded upon the evidence that "applicants' equipment prior to February 1936 was operated solely under the direction and control of the common carriers and under the latter's responsibility to the general public and to the shippers and that as to such operations applicants do not qualify as carriers by motor vehicle within the meaning of the Act and are consequently not entitled to a certificate or a permit under the 'grandfather' clause of Section 206 (a) or 209 (a) thereof" (R. 10).

Although the Commission did not elaborate upon its reasoning, the rationale of the decision is apparent. The Commission has consistently held that the purpose and effect of the "grand-

¹ Section 203 (a) (15) of the Motor Carrier Act of 1935 provided:

The term "contract carrier by motor vehicle" means any person, not included under paragraph (14) of this section, who or which, under special and individual contracts or agreements, and whether directly or by a lease or any other arrangement, transports passengers or property in interstate or foreign commerce by motor vehicle for compensation.

father" clause was to permit the continuance of all motor carrier service which was in operation on July 1, 1935. Starting with the premise that as between appellees and the common carriers for which they hauled, operating authority could only be issued to the one actually furnishing the carrier service, the Commission determined the issue by deciding who actually controlled the operations here involved. Upon finding that appellees' operations were directed and controlled by the common carriers, the Commission was satisfied that those operations were part of the common carrier service (for which a "grandfather" certificate was properly issuable to the common carriers) and that no contract service had been rendered by appellees upon which authority to continue could be based.⁵

The court below overruled the Commission on its interpretation of the statute and its conclusion drawn from the evidence. The court explicitly held that the question whether contract carrier service was being offered by appellees to the shipping public on the "grandfather" date was immaterial; it was enough that appellees were hauling freight under contracts, even though the contracts were with common carriers (R. 17-19). In reviewing the evidence the court purported to apply the same rule of determination that was applied by the

⁵ The Commission has held that no permit or certificate is required for the type of operation in which appellees were engaged on July 1, 1935 (*see infra*, p. 17).

Commission, i. e., whether appellees had direction and control of the operations claimed to support their applications. However, the court quite obviously attempted to weigh the evidence independently and in some instances apparently disregarded evidence upon which the Commission based findings. The court ruled that there was no substantial evidence to support the Commission's findings. We submit that the decision below disregards the purposes of the Act and the administrative construction of its provisions and that in reaching this decision the court below violated the fundamental principles of judicial review established by this Court.

I

THE CONSTRUCTION OF THE STATUTE ADOPTED BY THE
COURT BELOW IS CONTRARY TO THE SETTLED ADMINIS-
TRATIVE CONSTRUCTION AND IS NOT IN ACCORD WITH
THE STATUTORY SCHEME

*A. The Statute Does not Contemplate that Multiple
Grandfather Rights Shall be Granted on the
Basis of a Single Transportation Service*

The issue raised by this case is only a slight variation of the problem which the Commission has faced in passing on numerous applications for permits under the grandfather clause. The factual situation presented by this case is not unusual in the industry and in many cases both the owner-operator and the person employing his equipment and services have sought operating authority

covering exactly the same service. If the Commission had adopted a policy of granting both applications the result would have been to create in each instance two or more businesses offering transportation services to the public where there had only been one on the "grandfather" date. This would have occurred despite the fact that the Commission had never determined, in accordance with sections 207 (a) or 209 (b) of the statute, the public necessity for the additional service or the consistency of the operation with the public interest and with the policy of the Act. However, the Commission has consistently held that where only one public service was being performed on the "grandfather" date, that service supplies a basis for only one authority to continue the operation.⁶

It seems apparent that the rule adopted by the Commission is in complete accord with the general scheme of the statute. Congress, by enacting the regulatory scheme, vested in the Commission the power to determine when and to what extent additional common carrier or contract carrier services might be offered to the public after July 1, 1935. In determining that question the Commission must find that the contract carrier service will be consistent with the public interest and that the common carrier service is required by the public convenience and necessity.⁷ Obviously

⁶ See cases cited in footnotes 11 and 12, *infra*, pp. 24, 25.

⁷ Motor Carriers Act of 1935, Section 207 (a) and 209 (b).

Congress did not intend to permit additional common carrier or contract carrier services to be offered to the public by the simple device of allowing two or more persons to obtain separate permits under the "grandfather" clause on the basis of what had formerly been a single service to the public.

The court below, without questioning the fact that the common carriers who employed the appellees were entitled to common carrier "grandfather" rights on the entire line, held that appellees were entitled to contract carrier "grandfather" rights over the same route because they performed part of the transportation service for the common carriers under agreements with those carriers. Assuming, as we shall presently demonstrate, that appellees operated under the control of the common carriers, the service which appellees performed was an integral part of the common carrier service available to the public. Insofar as appellees were concerned, the public was compelled to use the common carrier service because appellees did not haul for anyone except common carriers (R. 51, 75, 215). It was not until after February 1936 that appellees began performing in their own name, under contract, transportation services for the shipping public. Thus a new and additional service was offered to the shipping public without the sanction of the Commission, although Congress had specifically required the

Commission's approval for the inauguration of all new transportation service by motor carrier.

The Commission quite properly refused to regard appellees' previous operations as contract carrier operations which could serve as a basis for the new operation because it found that previously the common carriers had furnished the entire transportation service to the public. The effect of the Commission's ruling was not to deprive appellees of the right to continue the same operations which they had conducted prior to the grandfather date. The Commission merely ruled that the prior operations were not "carrier" operations and hence were not subject to direct regulation under the Act. Accordingly, no authorization from the Commission was required for the continuance of those particular operations.*

* In *Dixon*, 21 M. C. C. 617, under similar circumstances, the Commission stated (p. 618):

* * * applicant does not qualify as a carrier by motor vehicle within the meaning of the act. Accordingly, the *authorization sought is not required from us in order for him to continue his operation as in the past.* [Emphasis supplied.]

And, similarly in *Smythe*, 22 M. C. C. 726, the Commission said (p. 728), under similar circumstances:

We conclude that applicant's vehicles are operated by the cartage company "by a lease or any other arrangement," within the meaning of section 203 (a) (15) of the act, *and that applicant is not performing any service for which authority is necessary under the act.* [Emphasis supplied.]

If the Commission had ruled that everyone in the same position as appellees was entitled to grandfather rights on the basis of the hauling done for common carriers, the result would have been complete chaos in the motor carrier industry. It has long been the practice in the industry for carriers to augment their own equipment by engaging extra trucks to handle overflow cargoes and in many instances the owner-drivers are also hired (R. 98, 103, 239-240). In one case recently decided by the Commission the evidence disclosed that on the grandfather date the applicant for a common carrier certificate was employing the services and equipment of eighty-three owner-operators and that some of the owner-operators had applied for operating authority covering the same service as that claimed by the applicant. *Kline*, 26 M. C. C. 741. A rule which would require the Commission to treat every owner-operator hauling for other carriers on July 1, 1935 as being a carrier within the meaning of the Act would result in such wholesale distribution of permits as to defeat the very purpose of federal regulation.

B. Appellees Cannot Claim To Be Contract Carriers Because Their Operations on July 1, 1935, Were Integral Parts of Common Carrier Systems

If we are correct in our contention that multiple "grandfather" rights may not be based on a single transportation service, appellees are entitled to

operating authority only if they show that they, and not the common carriers for whom they worked, actually rendered the common carrier service. The Commission held that appellees were not carriers at all and consequently were not rendering common carrier services. This determination of the Commission, as we show in Point II, *infra*, is correct and supported by the record.

Even if this Court should hold that multiple "grandfather" rights may be based on a single transportation service, however, appellees' position would not be aided. Appellees in effect admitted that they were not entitled to *common* carrier certificates but sought *contract* carrier permits on the basis of carriage performed for those entitled to the common carrier grandfather rights. We submit that, regardless of whether appellees might properly have claimed to be common carriers—the question discussed in Point II—the carriage of freight as a part of a common carrier operation is not contract carriage within the meaning of the statute.

In distinguishing between common carriers and contract carriers in the Act, it is not to be supposed that the Congress adopted arbitrary groupings superseding, for the purpose of regulation, all prior conceptions. At common law carriers fell into two classes, public and private. The difference between the two lay in the fact that in the case of public carriage there was an obligation to serve the general public indiscriminately

within the limits of the carrier's capacity and his undertaking. All carriers not assuming that obligation were classed as private carriers. With the advent of motor transportation, there developed a class of carriers by motor vehicle who did not serve the public indiscriminately, but who limited their services to certain shippers with whom they had contracts. Although these carriers were a species of private carrier under the common law conception, they were nevertheless carriers for hire and as such were held subject to regulation. *Stephenson v. Binford*, 287 U. S. 251. It was to these carriers who, like common carriers, furnish an entire service from consignor to consignee that the term "contract carrier", as used in the Act, was intended to apply.

The provisions of the Act applicable to contract carriers quite obviously were not designed to regulate owner-driver operations conducted for other carriers. Nothing in the entire regulatory scheme indicates any reason for requiring that such operations should be permitted only after a showing that the operations are "consistent with the public interest" and with the declared purpose of the Act (Section 209 (b)); or that such operators should file schedules of their minimum rates (Section 218 (a)); or that the Commission should prescribe the minimum rates (Section 218 (b)). Furthermore, the Act plainly envisages that contract carriers and common carriers will offer com-

peting types of service. Section 218 (b) of the Act enjoins the Commission, in prescribing minimum charges for contract carriers, "to give no advantage or preference to any such carrier in competition with any common carrier by motor vehicle subject to this part." There are frequent references in the sections dealing with contract carriers to the policy declared in Section 202 (a) which, among other things, lays stress upon the avoidance of unfair or destructive competitive practices.⁹ Certainly these provisions indicate that Congress did not intend that persons performing a part of a common carrier service should be regulated as contract carriers even though the arrangement with the carrier was in the nature of a contract for the transportation of freight.

⁹ In this connection the Commission has said (*Scott Bros., Inc.*, 4 M. C. C. 551, 559) :

When truck operators contract to do work in connection with transportation for carriers, of whatever description, which serve shippers directly, there may be unfair and destructive competition with motor common carriers, but it is not the truck operator who carries it on. Rather it is the carrier for which he works, and it is that carrier which must be held responsible and is subject to regulation in that respect. The truck operator has no direct dealings with the shipping public, nor does he fix the rates or charges with which the motor common carrier must compete. It is true that the truck operator may contract to do his work for unduly low compensation, to the advantage of the carrier in competition, but all carriers have an equal opportunity to employ such operators, just as they have an equal op-

The Commission has consistently refused, under varying circumstances, to accord contract carrier status to an operation which, as a part of a total common carrier service, is *public* rather than *private* in character. Thus, in *Scott Bros., Inc.*, 2 M. C. C. 155; 4 M. C. C. 551, it held that collection and delivery service by a motor carrier under individual contracts with two railroad companies within the New York terminal district, being "part and parcel of the common-carrier service of the railroads," was not contract carrier service.¹⁰ Also in *Dick's Transfer & Truck Term.*, 20 M. C. C. 785, the Commission held for the same reason that a motor carrier performing collection and delivery service within the City of Pittsburgh under contract with line-haul motor common carriers was not a contract carrier. We believe it clear that this administrative construction accords with both the language and purpose of the Act and that the court below erred in holding to the contrary.

portunity to hire labor or buy fuel. There may be need, on considerations of social welfare, to protect the truck operators or the employees or the fuel dealers against destructive competition with each other, but it is clear that the regulation of contract carriers in part II was not designed for such a purpose, but for the protection of the common carriers.

¹⁰ The Commission said (p. 564) :

Nor would applicant, under the proposed arrangement, be a "contract carrier by motor vehicle," because the transportation in which it proposes to engage must be judged by the entire service from consignor to consignee, and is distinctively a common-carrier service. It would perform work in connection with the latter service and, to that extent, would join or share in it.

II

THE COMMISSION'S DETERMINATION THAT APPELLEES
WERE NOT CARRIERS IS CORRECT AND SUPPORTED BY
SUBSTANTIAL EVIDENCE

From the foregoing discussion it is apparent that appellees have based their application on facts which refute their contention that they were operating as contract carriers on the grandfather date. However, the Commission chose to place its decision on the broader ground that the appellees were not carriers under the Act at all. This determination of the Commission was, we submit, correct and supported by the evidence.

In deciding that appellees did not have a carrier status, the Commission followed its consistent rule that an applicant is not a carrier if he does not have direction and control of the operations relied upon in support of his claim to operating authority. In its leading decision on this point, *Dixie Ohio Exp. Co.*, 17 M. C. C. 735, the Commission said (at page 740):

If the vehicles of the owner-operators, while being used by applicant, were operated under its direction and control, and under its responsibility to the general public as well as to the shipper, then its operations, in which such vehicles were employed, come within the phrase "or by a lease or any other arrangement" of section 203 (a) (14), and applicant, as to such op-

erations, was a common carrier by motor vehicle. The traffic transported in the vehicles of the owner-operators moved under bills of lading issued by applicant. The vehicles, while in applicant's service, were registered under applicant's operating authority and had applicant's name painted, or otherwise shown, thereon. Insurance covering them was arranged and paid for by applicant. Applicant's dispatchers or other employees directed the time and manner of the loading and unloading of the vehicles and also directed their movement over applicant's routes. We conclude that they were operated under applicant's direction and control and under its responsibility to the general public as well as to the shipper, and that applicant, as to its operations in which such vehicles were employed, was a common carrier by motor vehicle as defined in section 203 (a) (14).

This rule of determination has been uniformly followed by the Commission in the many cases involving this issue,¹¹ and has received the ap-

¹¹ *Tips*, 18 M. C. C. 85; *Columbia Terms. Co.*, 18 M. C. C. 662; *B-Line Motor Freight*, 20 M. C. C. 538; *Riss & Co., Inc.*, 21 M. C. C. 521; *Kaplan Trucking Co.*, 21 M. C. C. 691; *Sunset Motor Lines, Inc.*, 22 M. C. C. 113; *Galveston Truck Line Corp.*, 22 M. C. C. 451; *M. Moran Transp. Lines, Inc.*, 23 M. C. C. 139; *Welsh*, 23 M. C. C. 404; *J. Miller Co.*, 23 M. C. C. 421; *Highway Motor Freight Lines, Inc.*, 23 M. C. C. 621; *Day*, 23 M. C. C. 715; *Brady Transfer & Storage Co.*, 23 M. C. C. 767; *N. E. Rosenblum Truck Lines, Inc.*, 24 M. C. C. 121; *Schiller*, 24 M. C. C. 127; *Los Angeles-Seattle*

proval, both in principle and in application, of four specially constituted three-judge courts before whom the Commission's orders have been challenged.¹² Moreover, the intervening Transportation Act of 1940 left unchanged the Commission's construction of the Act, and lends great weight to the administrative rule. *United States v. American Trucking Ass'ns*, 310 U. S. 534, 539. Since neither the argument of appellees nor the decision of the court below appears to challenge the validity of the rule in its general application, it would seem that the only remaining question is whether the Commission properly applied the rule to the facts of this case.

The principle is well settled that "The judicial function is exhausted when there is found to be a rational basis for the conclusions approved by the administrative body." *Rochester Tel. Corp. v. United States*, 307 U. S. 125, 146; *Mississippi*

M. Exp., Inc., 24 M. C. C. 141; *Mobile Exp., Inc.*, 24 M. C. C. 254; *Campbell*, 24 M. C. C. 281; *Inland Motor Freight, Inc.*, 24 M. C. C. 293; *Hoffman*, 24 M. C. C. 376; *Nixon*, 26 M. C. C. 325; *Eakin*, 26 M. C. C. 339; *Davis*, 26 M. C. C. 349; *Brown*, 26 M. C. C. 399; *Shea*, 26 M. C. C. 419; *O. L. D. Forwarding Corp.*, 26 M. C. C. 481; *Puzio*, 26 M. C. C. 555; *Hoerman*, 26 M. C. C. 706; *Schrieber*, 26 M. C. C. 723; *Columbus & Chicago Motor Freight Inc.*, 26 M. C. C. 768.

¹² *O'Malley v. United States*, (D. Minn.) 38 F. Supp. 1; *Hoerman v. United States*, W. D. Mo., June 10, 1941; *Lubetich v. United States*, W. D. Wash., June 10, 1941, now on appeal to this Court, No. 322; *Johnson v. United States*, D. Ore., Sept. 1941.

Valley Barge Line Co. v. United States, 292 U. S. 282, 286-287; *Swayne & Hoyt, Ltd. v. United States*, 300 U. S. 297, 303. Even a cursory examination of the record suffices to demonstrate that the Commission's findings on the question of control not only had a rational basis but were supported by substantial evidence.

The record shows that the common carriers assumed the responsibility to the general public and to the shipper for the complete transportation service. The common carriers solicited the freight (R. 99, 109) and issued the bills of lading (R. 103, 109), and the freight moved from consignor to consignee on the common carriers' way bills and delivery receipts (R. 99, 108). In most cases, the common carriers collected the freight in their own pick-up trucks (R. 99). Their employees accumulated the freight at their docks, and loaded and sealed the trailers (R. 67). The freight then moved in appellees' equipment to the common carriers' destination terminal. There it was unloaded by the common carriers' employees (R. 67) and delivered to the consignees in their delivery trucks (R. 100). The common carriers carried the cargo, public liability, property damage and like insurance for the protection of the general and shipping public (Report, R. 7, R. 101). Upon these facts, the Commission could reasonably conclude that appellees were not the "carriers" performing the transportation service between the terminals.

No useful purpose would be served by reviewing in detail the evidentiary facts recited by the court below in its opinion (R. 15-19) and its findings of fact (R. 20-21). Apparently the court searched the record, not for the purpose of determining whether there was evidence to support the Commission's findings, but to see what other evidence was available.

While there is no great difference between the Commission and the court on the evidentiary facts, in some instances the findings of the court contradict the Commission's recital of the facts. Since there was evidence to support the Commission's evidentiary findings, the conflicting findings made by the court could have resulted only from an attempt to weigh the evidence and pass on the credibility of witnesses. In doing so the court plainly usurped the administrative function and exceeded the bounds of proper judicial review. *Warehouse Co. v. United States*, 283 U. S. 501, 508.

With equal disregard for the conclusions of the administrative body charged with duty of making such determinations, the court below rejected the Commission's ultimate findings on the questions of control and the carrier or non-carrier status of appellees. We believe that this disregard resulted as much from the court's misconception of the applicable law as from its failure to abide by the fundamental rules of judicial review. There would seem to be no question as to the sufficiency

of the evidence or the soundness of the Commission's ruling under a proper construction of the statute.

CONCLUSION

It is respectfully submitted that the decrees of the lower court should be reversed.

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OCTOBER 1941

APPENDIX

This Appendix contains the pertinent text of the principal sections of the Motor Carrier Act, 1935, cited in the body of the brief.

Some of these sections were amended by the Transportation Act of 1940, 54 Stat. 899, approved September 18, 1940, but they are set forth in this Appendix as they existed when the order of the Commission was entered. A footnote to each section subsequently amended shows the character of the amendment, if any.

Motor Carrier Act, 1935:

SEC. 203 (a) (15) The term "contract carrier by motor vehicle" means any person, not included under paragraph (14) of this section, who or which, under special and individual contracts or agreements, and whether directly or by a lease or any other arrangement, transports passengers or property in interstate or foreign commerce by motor vehicle for compensation.¹

¹ The Transportation Act of 1940 amended this definition. Both the original and the revised definitions are indicated in the following, wherein words which have been eliminated by the amendment are indicated by canceled type and those which have been added are indicated by italics:

The term "contract carrier by motor vehicle" means any person ~~not included under paragraph (14) of this section, who or which, under special and individual contracts or agreements, and whether directly or by a lease or any other arrangement, transports~~ *engages in the transportation (other than transportation referred to in paragraph (14) and the exception therein) by motor vehicle of passengers or property in interstate or foreign commerce by motor vehicle* for compensation.

SEC. 203 (a) (14) The term "common carrier by motor vehicle" means any person who or which undertakes, whether directly or by a lease or any other arrangement, to transport passengers or property, or any class or classes of property, for the general public in interstate or foreign commerce by motor vehicle for compensation, whether over regular or irregular routes, including such motor vehicle operations of carriers by rail or water, and of express or forwarding companies, except to the extent that these operations are subject to the provisions of part I.²

² The Transportation Act of 1940 amended this definition. Both the original and the revised definitions are indicated in the following, wherein words which have been eliminated by the amendment are indicated by canceled type and those which have been added are indicated by italics:

The term "common carrier by motor vehicle" means any person who or which undertakes, whether directly or by a lease or any other arrangement, to transport passengers or property, or any class or classes of property, for the general public in interstate or foreign commerce by motor vehicle for compensation, whether over regular or irregular routes, including such motor vehicle operations of carriers by rail or water, and of express or forwarding companies, except to the extent that these operations are subject to the provisions of Part I *which holds itself out to the general public to engage in the transportation by motor vehicle in interstate or foreign commerce of passengers or property or any class or classes thereof for compensation, whether over regular or irregular routes, except transportation by motor vehicle by an express company to the extent that such transportation has heretofore been subject to part I, to which extent such transportation shall continue to be considered to be and shall be regulated as transportation subject to part I.*

SEC. 203 (a) (17) The term "private carrier of property by motor vehicle" means any person not included in the terms "common carrier by motor vehicle" or "contract carrier by motor vehicle", who or which transports in interstate or foreign commerce by motor vehicle property of which such person is the owner, lessee, or bailee, when such transportation is for the purpose of sale, lease, rent, or bailment, or in furtherance of any commercial enterprise.³

SEC. 203 (a) (19) The "services" and "transportation" to which this part applies include all vehicles operated by, for, or in the interest of any motor carrier irrespective of ownership or of contract, express or implied, together with all facilities and property operated or controlled by any such carrier or carriers and used in the transportation of passengers or property in interstate or foreign commerce or in the performance of any service in connection therewith.⁴

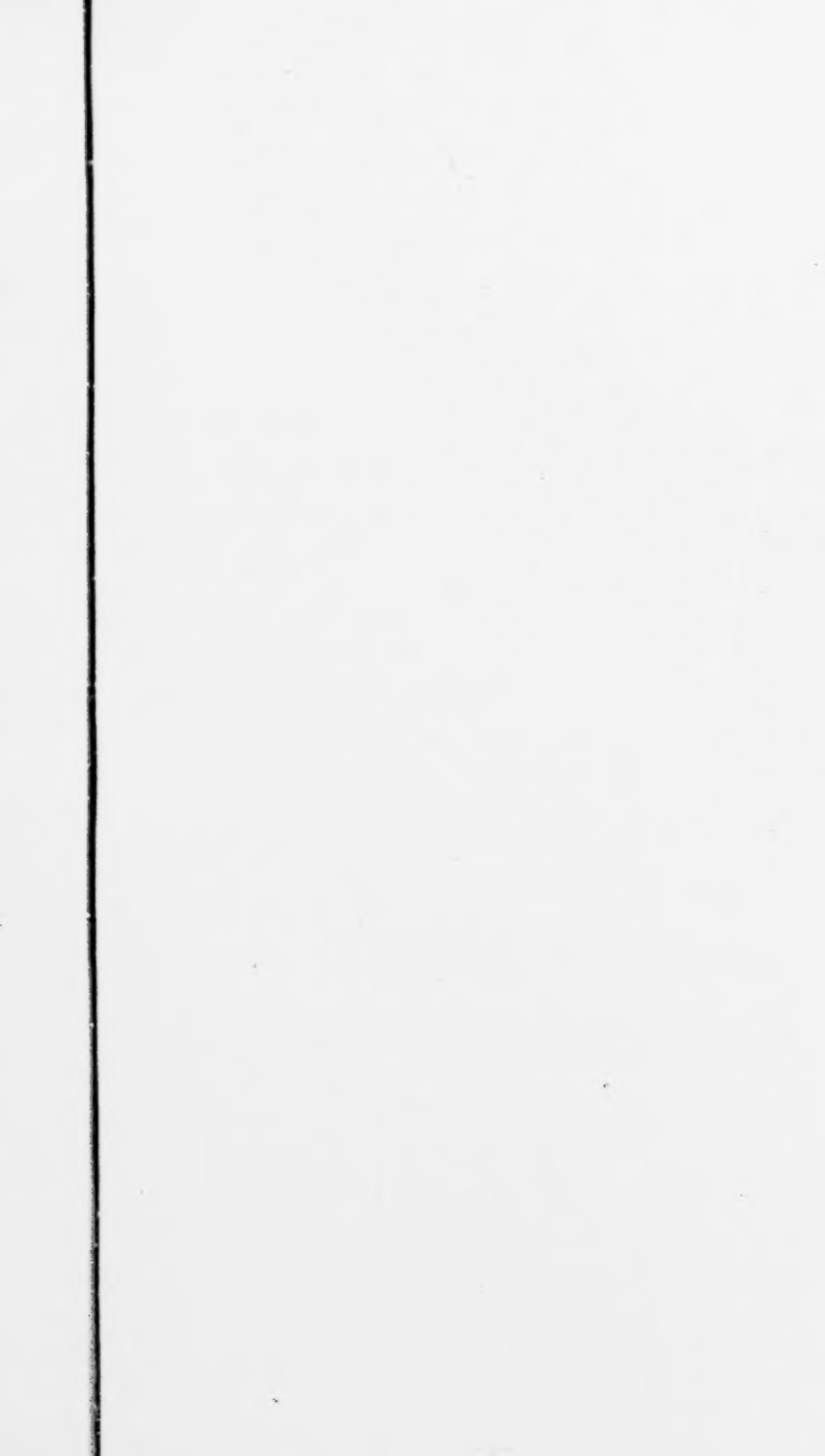
SEC. 209 (a) No person shall engage in the business of a contract carrier by motor vehicle in interstate or foreign commerce on any public highway or within any reservation under the exclusive jurisdiction of the United States unless there is in force with respect to such carrier a permit issued by the Commission, authorizing such person to engage in such business: *Provided*, That, subject to section 210, if any such carrier or a predecessor in interest was in bona fide operation as a contract carrier by motor

³ This provision was not amended by the Transportation Act of 1940.

⁴ This provision was not amended by the Transportation Act of 1940.

vehicle on July 1, 1935, over the route or routes or within the territory for which application is made and has so operated since that time, or, if engaged in furnishing seasonal service, only, was in bona fide operation on July 1, 1935, during the season ordinarily covered by its operations, except in either instance as to interruptions of service over which the applicant or its predecessor in interest had no control, the Commission shall issue such permit, without further proceedings, if application for such permit is made to the Commission as provided in paragraph (b) of this section and within one hundred and twenty days after this section shall take effect and if such carrier was registered on July 1, 1935, under any code of fair competition requiring registration, the fact of registration shall be evidence of bona fide operation to be considered in connection with the issuance of such permit. Otherwise the application for such permit shall be decided in accordance with the procedure provided for in paragraph (b) of this section and such permit shall be issued or denied accordingly. Pending determination of any such application the continuance of such operation shall be lawful. * * *

* This provision was not amended by the Transportation Act of 1940.



IN THE
SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1941.

THE UNITED STATES OF AMERICA and INTERSTATE
COMMERCE COMMISSION,

Appellants,

v.

N. E. ROSENBLUM TRUCK LINES, INC.

THE UNITED STATES OF AMERICA and INTERSTATE
COMMERCE COMMISSION,

Appellants,

v.

J. B. MARGOLIES, an Individual, Doing Business as
MANHATTAN TRUCK LINES.

Appeals from the District Court of the United States for the
Eastern District of Missouri.

BRIEF FOR APPELLEES.

J. C. HOPEWELL,

M. E. ARONOFF,

GUS O. NATIONS,

Solicitors for Appellees.

INDEX.

	Page
Opinions below.....	1
Question presented.....	2
Statute involved.....	2
Statement	2
Summary of argument.....	8
Argument	10
I. The only question before this Court for decision is whether the District Court erred in holding there was no substantial evidence before the Commission that appellees' trucks were operated under the direction and control of the common carriers	10
II. There is no evidence in the record of the proceed- ings before the Commission to support the follow- ing finding and conclusion of the Commission: "It is clear from the record, and we so conclude, that applicants' equipment prior to February, 1936, was operated solely under the direction and control of the common carriers and under the latter's responsibility to the general public and to the shippers. As to such operations, applicants do not qualify as carriers by motor vehicle within the meaning of the act and are consequently not enti- tled to a certificate or a permit under the 'grand- father' clause of section 206 (a) thereof".....	12
III. All of the evidence in the case supports and estab- lishes as fact the following conclusion in the dis- sent of Commissioner Lee: "These applicants have been continuously engaged in transportation of property by motor vehicle for hire since 1934, and, in my opinion, the evidence does not show	

that their vehicles were operated under the direction and control of the other carriers, who, during certain periods, turned over traffic to them for transportation" 19

The common carriers were merely shippers in their relation to appellees..... 20

- IV. Commissioner Lee of the Interstate Commerce Commission correctly stated the controlling law in his dissenting opinion, in which he said: "It was the intention of Congress that authority issued under the 'grandfather' clauses of sections 206 (a) and 209 (a) should go to the persons who actually conducted the motor-carrier operations and not to those who merely arranged for, or provided, transportation in vehicles operated under the direction, control and responsibility of others. See *Dixie Ohio Exp. Co. Common Carrier Application*, 17 M. C. C. 735, and *Aeme Fast Freight, Inc., Common Carrier Application*, 8 M. C. C. 211" 21

Cases Cited.

Columbia Term. Co., 18 M. C. C. 662 et seq.....	32
Dixie-Ohio Exp. Co., 17 M. C. C. 735.....	29
Glenn Cartage Co., 24 M. C. C. 285.....	25
J. E. Johnson v. The United States et al., District Court of Oregon, Sept. 22, 1941.....	25
J. Miller Co., 23 M. C. C. 421.....	25
J. T. O'Malley, 38 Fed. Supp. 14.....	30, 31
Los Angeles-Seattle M. Exp. Co., 24 M. C. C. 141.....	25
Mohundro's Notes on Motor Carrier Act of 1935, p. 556.....	25
O L D Forwarding Corp., 26 M. C. C. 481.....	25
Ray C. Kline, 26 M. C. C. 741-746.....	30, 31
Rochester Telephone Co. v. United States, 307 U. S. 125, 59 S. Ct. 754.....	11

Statutes Cited.

Judicial Code, Secs. 24 and 209, 28 U. S. C. A. 41, 43, 44, 45, 46, 47 and 48.....	6
Motor Carrier Act of 1935 (now the Transportation Act of 1940), 54 Stat. 899; 49 U. S. C. A., Sec. 301 et seq.....	2, 5, 6
49 U. S. C. A. 303 (14).....	19
49 U. S. C. A. 303 (15).....	3, 13, 19, 22
49 U. S. C. A. 306.....	5
49 U. S. C. A. 309 (a).....	3, 5, 12, 13

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BRIEF FOR APPELLEES.

OPINIONS BELOW.

The opinion of the district court (R. 15-19) is reported at 36 F. Supp. 467. The opinion of the Interstate Commerce Commission will be found at 24 M. C. C. 1, 1.

QUESTION PRESENTED.

Whether the transcript of proceedings before the Interstate Commerce Commission contains any evidence to support the finding of fact on which the commission's ruling is based.

STATUTE INVOLVED.

The Motor Carrier Act of 1935, which was amended by the Transportation Act of 1940; 54 Stat. 899; 49 U. S. C. A., Sec. 303, par. 15, and Sec. 309.

STATEMENT.

The statement made by appellants is argumentative in nature and to some extent inaccurate in our view of the facts and the record. Hence, the following statement:

The United States and the Interstate Commerce Commission have appealed in two cases named in the caption from final decrees of a specially constituted district court of three judges convened to hear the applications of appellees for orders setting aside separate rulings of the Interstate Commerce Commission.

Appellees had filed separate applications with the commission for permits or certificates to continue operations as contract or common carriers by motor vehicle of property in interstate commerce for hire. These applications were denied by a single opinion and order of the commission (R. 5). The applicants (appellees) filed in the district court at St. Louis separate actions to set aside and annul the commission's order. The two actions were considered by the three-judge court at a single hearing and determined in a single opinion. Judgment went to the applicants, setting aside the commission's order on the ground the evidence before the commission was insufficient

to support the factual finding upon which its order was based (R. 15-23, 36-39). The records in both cases are contained in the single printed transcript filed here by appellants.

The facts out of which the controversies arise are as follows:

The appellees are engaged in business as contract carriers¹ of freight by motor vehicle in interstate commerce and have been since 1934. The shippers for whom they carried freight prior to July 1, 1935,² were themselves common carriers.

Appellees' business consisted of moving for common carriers freight for the movement of which those carriers had no facilities or equipment available. Under a practice which had grown up before the adoption of the Motor Carrier Act of 1935, a common carrier, finding itself unable by its own equipment to move commodities consigned through it, would call appellees' offices and turn over to appellees freight to be moved under special contracts or agreements (R. 98). This service was performed by appellees for a number of common carriers, and appellees' equipment moved daily between St. Louis and Chicago (R. 55, 270-296).

Appellees' business was in no sense an appendage of that of any common carrier, but was entirely independent of any other enterprise. Appellees owned the trucks, maintained their equipment and garages, kept their own accounts, employed and paid the drivers, serviced, operated and garaged the trucks (R. 53, 212, 252) and accepted freight offered them by common carriers, as suited their convenience and the exigencies of their business. Appellees also carried the usual insurance on such operations

¹ See 49 U. S. C. A. 303 (15).

² See 49 U. S. C. A. 309 (a).

(R. 67) and when loss or damage occurred to merchandise in transit, appellees paid the damage when it was not covered by insurance (R. 67, 82-86, 270-296). All insurance premiums on trucks and commodities were paid by appellees as the operators of the equipment, the shippers or common carriers carrying blanket cargo insurance, but charging to appellees a proportionate amount of the premium to cover the insurance on merchandise which appellees carried for them³ (R. 82-86). The insurance thus paid for by appellees covered losses greater than \$100.00. All losses less than \$100.00 were charged against appellees and paid by them as the operators of the equipment.⁴

None of the carriers who availed themselves of appellees' services leased appellees' trucks or ever had or acquired any interest in them or any right to use or control them, except as they might contract from day to day for

³ This is shown by testimony of witnesses and in statements issued by the common carriers on financial settlements with appellees. The items usually appear as "Pd. & Pl. Ins." (Property damage and public liability insurance) (R. 82-86, 270-296). The only exception to this otherwise uniform rule is that George Goode, president of Be-Mac Transportation Co., testified Rosenblum hauled three shipments for Be-Mac on which no charge for insurance was made to Rosenblum (R. 108). The record of settlement (R. 268) with Be-Mac, however, shows appellee paid for loss or damage to cargo; see statement No. 1510X, "Claim #10 \$4.81," charged to appellee by Be-Mac.

⁴ This is shown by these items in financial settlements between the common carriers and appellees: R. p. 268, Claim #10, \$4.81; p. 276—Sears Cl. 188173—our 301 \$5.50; p. 278—Sears-Roeback \$83.01; p. 279—Cl. 411—Sears 172442 \$8.45; Cl. 424—Sears 172999 \$14.77; p. 280—Claim 475—Renard Linoleum \$13.00; Claim 490—James McCoy Co. \$.75; p. 282—Sears Claim 189961—pro 21029—1/22/35 \$.47; Sears Cl. 188175—pro 19807—2/29/34 \$5.50; Sears Cl. 189439—pro 20853—1/17/35 \$.35; Sears Cl. 189615—pro 20559—1/10/35 \$1.00; Sears Cl. 189736—pro 17250—7/31/34 \$6.05; Sears Cl. 190299—pro 21001—1/22/35 \$.70; Sears Cl. 190264—pro 26196—2/7/35 \$5.00; Sears Cl. 184916—Charge 11/6/34 in error Cr. \$.45; p. 283—Damage—pro 22206—2/20/35 \$.72; p. 285—Sears Cl. #192067—our #163 \$25.09; Sears Cl. #193298—our 166 \$37.37; H & R Furn. Co. Cl. our 197—pro 11089—8/9/34 \$6.75; E. Main St. Garage—Taylorville—Dam. Pon. Sedan—Mrs. Opal Angle \$11.00; Sears Cl. 194025—our #224—pro 41822, 4/1/35 \$2.46; Sears Cl. 191292—our #229 \$4.53; Sears Cl. 194957—our #255—pro 42402 \$5.45; p. 287—Sears Cl. 197346—our 315 \$2.92; Schulze Bak. Co. Cl.—our 330 \$5.42; p. 288—Sears-Roeback Co. Cl. 366 \$2.89; Lammert Furn. Co. Cl. 344 \$2.35; Sears-Roeback Co. Cl. 347 \$2.23; p. 290—Cl. 403 Sears \$15.33; Cl. 421 Sears 172855 \$1.07; p. 291—Claim declined (Cr.) \$5.42; p. 294—Claim 380 \$.29; Claim 581 \$.33; p. 295—Claim 431 \$.72; Claim 435 \$1.70.

the carriage of their freight on appellees' constantly moving equipment. Sometimes shipments offered by common carriers and accepted by appellees amounted to truck-load lots. Others were less than truckloads. In the latter case shipments of several common carriers were moved on one truck at one time (R. 75, 247).

Appellees issued no bills of lading, but operated solely under informal agreements on each shipment with those shippers (common carriers) who used their service.

After adoption of the Motor Carrier Act of 1935, 49 U. S. C. A. 301 et seq. (now Transportation Act of 1940), and within the time limited by that act, appellees, or their predecessors in interest, applied to the Commission for permits or certificates to continue in business as contract or common carriers under the "grandfather" clause of the act (49 U. S. C. A. 306, 309).

After hearings and taking of testimony before examiners appointed by the Commission, reports were filed in each case, holding that appellees are contract carriers and recommending issuance of permits (R. 87-93). At a subsequent hearing before other examiners, a contrary recommendation was made (R. 204, 205).

On consideration of the examiners' reports and recommendations, two of the three members of Division 5 of the Commission reached the conclusion that plaintiffs were not carriers on July 1, 1935, and denied permits to them. The ruling was based upon the following conclusion of fact (R. 10):

"It is clear from the record, and we so conclude, that applicants' equipment prior to February, 1936, was operated solely under the direction and control of the common carriers and under the latter's responsibility to the general public and to the shippers. As to such operations, applicants do not qualify as

carriers by motor vehicle within the meaning of the act and are consequently not entitled to a certificate or a permit under the 'grandfather' clause of section 206 (a) or 209 (a) thereof."

This decision was concurred in by two commissioners, but Commissioner Lee dissented. The dissent followed the recommendations of the two examiners, contending plaintiffs were contract carriers within the meaning of the law and entitled to permits. Commissioner Lee's dissent is as follows (R. 10):

"It was the intention of Congress that authority issued under the 'grandfather' clauses of sections 206 (a) and 209 (a) should go to the persons who actually conducted the motor-carrier operations and not to those who merely arranged for, or provided, transportation in vehicles operated under the direction, control and responsibility of others. See *Dixie Ohio Exp. Co. Common Carrier Application*, 17 M. C. C. 735, and *Aeme Fast Freight, Inc., Common Carrier Application*, 8 M. C. C. 211.

"These applicants have been continuously engaged in transportation of property by motor vehicle for hire since 1934, and, in my opinion, the evidence does not show that their vehicles were operated under the direction and control of the other carriers, who, during certain periods, turned over traffic to them for transportation. I would grant authority to applicants."

For relief from this action of a divided Commission, appellees brought these actions under Sections 205 (g) of the Transportation Act of 1940, 49 U. S. C. A. 305, and 24 and 209 of the Judicial Code (28 U. S. C. A. 41, 43, 44, 45, 46, 47 and 48).

At the trial in the district court appellees, as plaintiffs, introduced a transcript of the evidence which was before the Commission and from which the Commission drew the conclusion on which its order was based (pp. 23, 39).

The district court filed an opinion (R. 15-19), as well as conclusions of law (R. 21, 22, 38) and judgment, in which it held:

“The conclusion seems inevitable that the common carriers did not have exclusive control of and dominion over the trucks of complainants while they were engaged in the transportation business, and that the conclusion of the Commission to that effect has no substantial basis in the evidence offered.”

From the judgment giving effect to this ruling and setting aside the commission's orders in each case, this appeal is taken by the Government and the Commission.

SUMMARY OF ARGUMENT.

I. The only question before this court for decision is whether the district court erred in holding there was no substantial evidence before the Commission that appellees' trucks were operated under the direction and control of the common carriers.

II. There is no evidence in the record of the proceedings before the Commission to support the following finding and conclusion of the Commission:

"It is clear from the record, and we so conclude, that applicants' equipment prior to February, 1936, was operated solely under the direction and control of the common carriers and under the latter's responsibility to the general public and to the shippers. As to such operations, applicants do not qualify as carriers by motor vehicle within the meaning of the act and are consequently not entitled to a certificate or a permit under the 'grandfather' clause of section 206 (a) thereof."

III. All of the evidence in the case supports and establishes as fact the following conclusion in the dissent of Commissioner Lee:

"These applicants have been continuously engaged in transportation of property by motor-vehicle for hire since 1934, and, in my opinion, the evidence does not show that their vehicles were operated under the direction and control of the other carriers, who, during certain periods, turned over traffic to them for transportation."

IV. Commissioner Lee of the Interstate Commerce Commission correctly stated the controlling law in his dissenting opinion, in which he said:

"It was the intention of Congress that authority

issued under the 'grandfather' clauses of sections 206 (a) and 209 (a) should go to the persons who actually conducted the motor-carrier operations and not to those who merely arranged for, or provided, transportation in vehicles operated under the direction, control and responsibility of others. See Dixie Ohio Exp. Co. Common Carrier Application, 17 M. C. C. 735, and Acme Fast Freight, Inc., Common Carrier Application, 8 M. C. C. 211."

ARGUMENT.

- I. The only question before this court for decision is whether the district court erred in holding there was no substantial evidence before the Commission that appellees' trucks were operated under the direction and control of the common carriers.

The Commission denied appellees' claims to permits as contract carriers because it found as an ultimate fact

"that applicants' equipment prior to February, 1936, was operated solely under the direction and control of the common carriers and under the latter's responsibility to the general public and to the shippers" (R. 10).

Relying on this fact, the Commission reached the conclusion of law that the common carriers and not the truck owners were engaged in the interstate operation, and, consequently, the owners were not entitled to permit rights.

The district court held there was no substantial evidence before the Commission from which its factual conclusion could be drawn, and set aside the order based on that conclusion. Except for this appeal, the district court's order would have remanded the matter to the Commission for further consideration.

We believe the sole question here for determination is whether the district court erred in holding the evidence before the Commission does not support its finding and resulting order. Accordingly, we have thus stated the question we believe is before this court for determination:

"Whether the transcript of proceedings before the Interstate Commerce Commission contains any evidence to support the finding of fact on which the Commission's ruling is based."

Appellants, however, think the question is broader. Apparently the appeal rests on the erroneous theory this court may exercise the function of the Commission and decide the larger question which only the Commission can decide. Appellants' brief states the issue here thus (p. 2):

“Whether the truck operations in which appellees were separately engaged on July 1, 1935, were those of ‘contract carriers by motor vehicle’ as defined by the Motor Carrier Act of 1935, entitling them to permits from the Interstate Commerce Commission to operate as such carriers under the ‘grandfather’ proviso of Section 209 (a) of the Act.”

Obviously, the latter statement involves questions of both law and fact. **It is the precise question presented to, and the entire issue decided by, the Commission.** It is not the question decided by the district court. Neither is it the question to be decided here. The judicial question is much narrower.

To answer the question posed and argued by appellants, this court must usurp the function of the Commission and exercise the discretion which the law has confided expressly and exclusively to the Commission. To do this the court must abandon the oft-stated rule that the judicial function in review of orders of the Commission is limited to the test of “statutory authority and the basic prerequisites of proof.”⁵

To resolve the question proposed by appellants' brief, this court must first decide what were the “operations in which appellees were engaged on July 1, 1935.” But such determination is in the exclusive province of the Commission. It requires an examination of evidentiary facts for the purpose of reaching a conclusion on the ultimate facts, in addition to applying the law to those facts.

⁵ *Rochester Telephone Co. v. United States*, 307 U. S. 125, 59 S. Ct. 754.

This no court may do, in light of the established rule. It must take the ultimate facts as the Commission has found them and apply to them only the test of "the basic prerequisites of proof." If the Commission's finding of fact meets this test it stands. If not it must be set aside. Here judicial authority ends.

The complaints filed in the district court were founded on the allegations the Commission's factual conclusion was unsupported by the evidence (R. 3, 31). The district court accepted this view and held (R. 19):

"The conclusion seems inevitable that the common carriers did not have exclusive control of and dominion over the trucks of complainants while they were engaged in the transportation business, and that the conclusion of the Commission to that effect has no substantial basis in the evidence offered."

Was this error? This is the sole issue on this appeal.

II. There is no evidence in the record of the proceedings before the Commission to support the following finding and conclusion of the Commission:

"It is clear from the record, and we so conclude, that applicants' equipment prior to February, 1936, was operated solely under the direction and control of the common carriers and under the latter's responsibility to the general public and to the shippers. As to such operations, applicants do not qualify as carriers by motor vehicle within the meaning of the act and are consequently not entitled to a certificate or a permit under the 'grandfather' clause of section 206 (a) thereof."

By these actions appellees invoked the "grandfather" provision of the Motor Carrier Act,⁶ which provides, *inter alia*:

⁶ 49 U. S. C. A. 369 (a).

"no person shall engage in the business of a contract carrier by motor vehicle in interstate or foreign commerce on any public highway * * * unless there is in force with respect to such carrier a permit issued by the Commission, authorizing such person to engage in such business; * * * if any such carrier or a predecessor in interest was in bona fide operation as a contract carrier by motor vehicle on July 1, 1935, * * * and has so operated since that time, the Commission shall issue such permit, without further proceedings * * *."

By the act⁷ a contract carrier is declared to be

"any person, not included under paragraph (14) of this section, who or which, under special and individual contracts or agreements, transports passengers or property in interstate or foreign commerce by motor vehicle for compensation."

It was and is the contention of appellees that on July 1, 1935, they were transporting property in interstate commerce by motor vehicle for compensation, and that Congress had them and others similarly engaged in mind in enacting the so-called "grandfather" clause, and intended by that clause to permit them to remain in the business in which they were engaged. The Commission denied their applications for permits because a majority of Division 5 found that they were not transporting property, but their trucks were being operated by those (common carriers) whose commodities were being hauled on the trucks, and, hence, the common carriers were doing the transporting. Thus the pivotal question in this case is, **"Who controlled the trucks of appellees?"** Two of the

⁷ 749 U. S. C. A. 303 (15). This section was modified by the Transportation Act of 1940, effective after the date of the Commission's order in these cases. The new section provides: "The term 'contract carrier by motor vehicle' means any person which, under individual contracts or agreements, engages in the transportation (other than transportation referred to in paragraph (14) and the exception therein) by motor vehicle of passengers or property in interstate or foreign commerce for compensation."

three commissioners in Division 5 found the common carriers had control. Commissioner Lee, who filed a dissenting opinion, the appellees and the district court all believe there is **no evidence** in the record that the common carriers had control of the trucks. The finding of the majority of Division 5 is quoted above. Commissioner Lee's dissent is as follows:

"These applicants have been continuously engaged in transportation of property by motor vehicle for hire since 1934, and, in my opinion, the evidence does not show that their vehicles were operated under the direction and control of the other carriers, who, during certain periods, turned over traffic to them for transportation. I would grant authority to applicants."

There is not a word of evidence in the record which supports the conclusion the common carriers controlled appellees' equipment, but all the evidence which bears upon the question of control shows appellees were in control. And this is clearly shown also by the primary facts stated in the Commission's opinion, wherein, for example, it is said as to Rosenblum:

"N. E. Rosenblum **commenced operations** with one tractor-trailer unit in 1934. A second unit was acquired in October, 1934, and in June, 1935, a third unit was leased and **put into service**. From the inception of **his operations** until February, 1936, **applicant hauled** only for 'reputable' truckers, between St. Louis and Chicago, for which he was paid a lump sum per trip on dock-to-dock movements. During this period **his operations** were performed principally for Transamerican Freight Lines, Inc., hereinafter called Transamerican, a common carrier operating a large number of units in this territory. Rosenblum testified that he also hauled for a number of other common carriers, most of whom are protestants herein, although representatives of certain of these protestants

testified that their records indicated that they had never used Rosenblum's services. It was not shown that the arrangements with the other carriers differed from those herein discussed.

"In conducting the described operation, applicant protected his equipment by carrying fire, theft, and collision insurance in his own name, while cargo, public-liability, property-damage, and like insurance for the protection of the general and shipping public were carried by Transamerican or other common carriers for which he was working. In some instances, the cost of the latter types of insurance was charged to Rosenblum, and on occasions small cargo-damage claims were charged to him by the carrier. While drivers of the trucks were employees of Rosenblum, Transamerican directed the routes generally to be followed by the drivers, required them to 'sign in' at registration stations along the route, and directed their departure and time of arrival at destination. Witness for Transamerican testified that the drivers were required to be acceptable to it, and in one instance when a driver was intoxicated it refused to permit him to transport one of its loads."

The foregoing statement, with two exceptions, is fully substantiated by the record. The exceptions are the statement that Rosenblum's operations "were performed principally for Transamerican Freight Lines, Inc.,"; and the further statement, "Transamerican directed the routes generally to be followed by the drivers, required them to 'sign in' at registration stations along the route, and directed their departure and time of arrival at destination." The record does not support these statements, but denies them. But, even if true, these things do not show or intimate the common carriers were controlling the trucks.

And the remaining portion of the language quoted shows not that the common carriers controlled the equip-

ment, but that these appellees controlled it. And when these statements are added to the undisputed facts that the equipment was driven, serviced, maintained, housed and wholly handled by plaintiffs' employees, it is conclusively established, without evidentiary dispute, that it was appellees and not the common carriers who controlled the equipment.

This language of the Commission, particularly the words in bold-face type, are an affirmative declaration of the Commission that it was the applicant who "commenced operations," and "from the inception of his operations" he "hailed for reputable truckers," for which "movements" he was paid a lump sum per trip; that "his operations" were performed for divers common carriers; that "in conducting the described operations, applicant protected his equipment" with insurance of certain kinds and paid for other insurance on the cargoes, and that applicant paid the damage claims not covered by insurance; that "drivers of the trucks were employees of Rosenblum."

It is difficult to understand how this statement of primary facts can be said to lead to the conclusion the common carriers controlled Rosenblum's equipment. To us it seems a bald *non sequitur*. We believe these facts in the opinion lead directly and inevitably to the conclusion Rosenblum was in control of the equipment. Since the Commission found (R. 8) Margolies' predecessor operated under similar conditions, this applies equally to him.

And appellants' brief in effect concedes this. It is true that on page 26 it undertakes to recite evidence to support the finding, but succeeds only in demonstrating the contrary. It is there said the finding that the common carriers operated and controlled appellees' equipment and performed the interstate operation is supported by evidence that

(a) the common carriers solicited the freight,

(b) and issued bills of lading, way bills and delivery receipts,

(c) in most cases they collected and accumulated the freight and loaded and sealed the trailers,⁸

(d) the freight then moved in appellees' equipment to the common carriers' destination terminal,

(e) and the common carriers delivered it to consignee at destination, and

(f) carried cargo, public liability and property damage and like insurance.⁹

We submit there is no word in this summary which supports the finding the contract carriers' equipment "was operated solely under the direction and control of the common carriers and under the latter's responsibility to the general public and to the shippers."

On the contrary, (d) does clearly show who was transporting "property in interstate * * * commerce by motor vehicle," and that such transportation was being performed by the contract carriers, alone. This summary of evidence relied on in appellants' brief in effect concedes the accuracy of the statement by the district court that

"The conclusion seems inevitable that the common carriers did not have exclusive control of and dominion over the trucks of complainants while they were engaged in the transportation business, and that the conclusion of the Commission to that effect has no substantial basis in the evidence offered" (emphasis ours).

The argument of appellants is that the common carriers were entitled to "grandfather" rights as common carriers

⁸ The record cited shows only that one common carrier (Transamerican) sealed the trailers when shipping in truckload lots. Many trucks carried part loads from several common carriers, all of whom could not have sealed such trailers (R. 75, 246, 247).

⁹ The record clearly shows, as we have already demonstrated, that while insurance policies were in the name of common carriers, all premiums were paid by the contract carriers, and all uninsured losses were paid by contract carriers.

because of the operation of the contract carrier trucks, and, hence, the contract carriers cannot be entitled to such rights. It proceeds on the theory that "transportation of property in interstate commerce by motor vehicle for compensation" is a vastly complex operation with many diverse factors and component parts. It is said that it consists principally of soliciting business, issuing bills of lading and collecting and delivering freight. And it is conceded, grudgingly, that the actual hauling of the freight from one state to the other is a small but, withal, relatively unimportant part of the operation. From this false premise, the argument proceeds that the actual hauling of the freight is only an incident in the operation, of which soliciting, issuing bills of lading and collecting and delivering freight is the principal part. Thus, it is said, the contract carriers were only "an integral part" of the common carriers' operation.

The principal difficulty with this view is it is contrary to common reason and flatly contradicts the language of the act, which makes the test the "**transporting** of freight in interstate commerce," and does not mention soliciting, collecting or delivering as any part of the operation.

In the operations dealt with in the record no common carrier ever **transported** an ounce of freight in interstate commerce. Every element of the operation mentioned in the statute was performed by the contract carriers. None was performed by the common carriers. The operations of contract carriers fully satisfy every requirement of the statutory definition. The operation may be stripped of every element contributed by the common carriers and it would still satisfy the statute. Strip it of the work of the contract carriers and there is nothing left that can be described by either of the words "transportation" or "interstate."

III. All of the evidence in the case supports and establishes as fact the following conclusion in the dissent of Commissioner Lee:

“These applicants have been continuously engaged in transportation of property by motor vehicle for hire since 1934, and, in my opinion, the evidence does not show that their vehicles were operated under the direction and control of the other carriers, who, during certain periods, turned over traffic to them for transportation.”

Appellants are unable or unwilling to recognize that in providing for both common carriers and contract carriers, Congress had in mind two distinctly different types of service. The statute¹⁰ shows that common carriers are to carry “for the general public.” As such they are privileged and required to carry for all who seek their service and pay for it. This has long been the responsibility of a common carrier, by rail, water, air or motor. Thus the common carrier has a “responsibility to the general public and its shippers.”

But the statute¹¹ also creates another and distinctly different and entirely independent type of carrier, i. e., the contract carrier, who hauls not “for the general public,” but “under special and individual contracts or agreements.” Thus the contract carrier as such has no responsibility to the general public, since he has no relation or duty to the general public. He has a duty and responsibility only to those persons with whom he has “special and individual contracts or agreements.”

Hence, the statement of appellants that the operations were under the responsibility of the common carriers “to the general public and the shippers” has no meaning. The

¹⁰ 49 U. S. C. A. 303 (14).

¹¹ U. S. C. A. 303 (15).

common carriers had a responsibility to the shippers from whom they solicited and obtained the freight. We had a similar and equal responsibility to them **as our shippers**. For protection against loss of freight of a value greater than \$100.00, they required us to carry insurance in their name. Smaller losses we paid. Thus, whatever loss was incurred by negligent or inefficient operation of the equipment fell on us.

Can it be argued or contended with reason that they were operating the trucks, but for their negligence in so doing we were responsible? We were responsible for the loss because we were operating the equipment when the loss occurred. And every loss or damage incurred was paid either by us or by insurance for which we paid. Thus we carried and discharged the common-law obligation to the shippers which makes the carrier the insurer of safe arrival of goods.

The common carriers were merely shippers in their relation to appellees.

No carrier ever moved one of appellees' trucks in interstate commerce, or elsewhere. No common carrier had a lease or other right to the possession or control of one of appellees' trucks. No common carrier could demand the right to use appellees' trucks or to place a shipment aboard one of them. No common carrier had the right to say where, how, or when any truck should move, or what it should carry, or where it should go, or how fast it could travel. No common carrier could lay up a truck for repairs, fill it with gasoline, inflate its tires, or do any other thing about its movement or control. No common carrier paid any state a motor vehicle license to move one of appellees' trucks on state highways.

All of these things, and every other thing incident to the

operation and control of motor vehicles, were done by appellees alone, as the record clearly shows.

Appellees could accept or decline to accept the carrier's offer of freight for carriage.

It is said in the Commission's opinion, apparently to support the conclusion the common carrier controlled the equipment, that appellees' "drivers were required to be acceptable to" the common carrier, "and in one instance, when a driver was intoxicated, it refused to permit him to transport one of its loads."

But this does not indicate the common carrier was controlling the equipment. If it were, presumably, it would have replaced the drunken driver and used the truck to move the freight. But since it could not control the truck or the driver it refused to turn the freight over to appellees for carriage. This proves that the common carrier did not control the equipment, but only rejected its service when operation of it was unsatisfactory. Presumably, the truck and driver thus rejected proceeded to other duties under the control of its master, the contract carrier. The right thus exercised by the common carrier to refuse to turn over freight for carriage when service or equipment is unsatisfactory is not peculiar to a carrier. It is the right of any shipper. This incident emphasizes the common carrier's position as the shipper—not the carrier.

IV. Commissioner Lee of the Interstate Commerce Commission correctly stated the controlling law in his dissenting opinion, in which he said (R. 10):

"It was the intention of Congress that authority issued under the 'grandfather' clauses of Sections 206 (a) and 209 (a) should go to the persons who actually conducted the motor-carrier operations and not to those who merely arranged for, or provided, transportation in vehicles operated under

the direction, control and responsibility of others. See *Dixie Ohio Exp. Co. Common Carrier Application*, 17 M. C. C. 735, and *Aerne Fast Freight, Inc., Common Carrier Application*, 8 M. C. C. 211."

We believe the sole question in this case for determination on this appeal is whether the evidence before the Commission sustains the factual conclusion on which its order is based, as shown under point I.

However, the argument of appellants discloses an erroneous view of the law which apparently is shared by two members of Division 5 of the Commission, and which has contributed to the Commission's error in reaching its conclusion in this case.

The view apparently entertained by the Commissioners who concurred in the ruling here under review, and reflected in appellants' brief, is that the statutory definition of a contract carrier is too broad—that Congress erred in failing to limit and confine more closely the "grandfather" rights of contract carriers, and that this supposed error of the lawmaker should be corrected by administrative interpretation.

The definition of a contract carrier, 49 U. S. C. A. 303 (15), is as follows:

"The term 'contract carrier by motor vehicle' means any person, not included under paragraph (14) of this section, who or which, under special and individual contracts or agreements, and whether directly or by a lease or any other arrangement, transports passengers or property in interstate or foreign commerce by motor vehicle for compensation."

Appellants say that to this definition should be added the limitation that a contract carrier must not make "special and individual contracts or agreements" with or haul for common carriers, on penalty of being deprived of

his rights. They would modify the definition so as to make it read:

“The term ‘contract carrier by motor vehicle’ means any person, not included under paragraph (14) of this section, who or which, under special and individual contracts or agreements, and whether directly or by a lease or any other arrangement, transports passengers or property in interstate or foreign commerce by motor vehicle for compensation, *so long as such transportation is not performed for shippers who are common carriers.*”

If appellants’ contention about the controlling law (which we think is not now before the court) were sustained, the result would be in effect to amend the statute by the addition of the language set out in *Italics*.

This manifestly was not the intent of Congress, and is in conflict with the statute as Congress wrote it. It would limit the right to such an extent that many who were the objects of Congressional concern in writing the definition would be excluded from the industry, and this is what appellants seek to accomplish.

Appellants say that because of the interstate operations in which appellees were engaged, and which the common carriers arranged but did not perform, the common carriers are entitled to “grandfather” rights. Upon this hypothesis, which we believe is of doubtful validity, is erected the following entirely fallacious theory:

“Appellees cannot claim to be contract carriers because their operations on July 1, 1935, were integral parts of common carrier systems.”

Of this it may be said in this court’s language, “the premise is not valid, nor does the conclusion follow.”

Thus it is argued, however, the rights of the contract carriers are subordinate to and dependent on the rights

of their shippers. If the shipper claims the right the actual carrier is barred, according to this theory.

But the statute does not recognize any such limitation. And there is no reason for interpolating into the statute language which Congress did not use and which is clearly in contradiction of what Congress meant.

Appellants argue (page 18) that to allow permits to all persons who, like appellees, come within the literal definition of a contract carrier, would result in "complete chaos in the motor carrier industry." By this is obviously meant that many permits would result where appellants think there should be only a few. In other words, the policy decided on by Congress is a mistaken one. We cannot agree. Howbeit, Congress is the policy-making authority, and this argument should be made to Congress—not to the courts.

The test is, of course, the intention of Congress. And the judicial problem is the ascertainment of that intent. The congressional language here is so crystal clear it leaves no room for the office of interpretation.

Moreover, it should be kept in mind that this act was adopted in the midst of a disastrous depression marked by widespread unemployment arising out of business failures. In practically all legislation enacted in that period, Congress was struggling valiantly with the tragedy of unemployment and business stagnation. Daily its concern over business paralysis was apparent. In the great volume of new legislation of the time, the renewal of general employment and return to prosperity was a major objective. And that purpose stands out in the "grandfather" clause of this act. Congress was seeking here, and generally, for means to keep small business men in the enterprises which they had established in the battle with the scourge of de-

pression, and which they were conducting in defiance of adversity and economic discouragement.

And Congress clearly had that objective in mind in admonishing the Commission that men who were in the motor freight business must be permitted to remain. They were a part of the nation's remaining backlog of business ingenuity and perseverance that prevented complete freezing of business activity. And Congress meant to preserve them and their businesses.

Senator Burton K. Wheeler, sponsor of the act, and chairman of the Senate Committee in charge of the bill in the upper chamber, hailed its adoption by asserting,¹² "There will be plenty of service under the act; every common carrier truck or bus operator who was in business June 1 will receive an interstate certificate as a matter of right. Every contract truck operator who was in business July 1 will receive his interstate permit." What better authority on what Congress intended by the "grandfather" clause of the act than the sponsor of the act himself? Yet appellants argue that the act permits a great number of the small operators who were the objects of congressional concern to be driven out of the industry by a distortion of the act, in contradiction of the promise they would receive permits as a matter of right.

Commissioner Lee's dissents in this case and in other recent cases cited in the margin¹³ truly reflect the intent of Congress and give to the statute the only rational interpretation possible. District Judge Fee¹⁴, discussing the same point, has truly said:

¹² Mohundro's Notes on Motor Carrier Act of 1935. p. 556.

¹³ Los Angeles-Seattle M. Exp. Co., 24 M. C. C. 141; Glenn Cartage Co., 24 M. C. C. 285; O L D Forwarding Corp., 26 M. C. C. 481; J. Miller Co., 23 M. C. C. 421.

¹⁴ J. E. Johnson v. The United States et al., District Court of Oregon, Sept. 22, 1941.

“There is no clause of the act which provides that one who has been transporting goods in interstate commerce on and since June 1, 1935, must have dealt directly with the shippers and himself issued bills of lading. But the Commission were apparently influenced by their ideas that public policy required that no more than one ‘grandfather’ certificate should be issued for a single operation. **This determination seems to wipe out property rights of a small operation which Congress sought to preserve.**”

And the district court in this case, with equal sagacity, has unquestionably discerned the true legislative intent and purpose in saying in its opinion (14):

“The statute defines a contract carrier (49 U. S. C. A. 303):

“‘The term “contract carrier by motor vehicle” means any person not included under paragraph (14) of this section, who or which, under special and individual contracts or agreements, and whether directly or by a lease or any other arrangement, transports passengers or property in interstate or foreign commerce by motor vehicle for compensation.’

“The Act carries its own limitations. The section defining terms used excludes from the operation of the law, ‘the casual, occasional or reciprocal transportation of passengers or property in interstate or foreign commerce for compensation by any person not engaged in transportation by motor vehicle as a regular occupation or business.’ Sec. 303 (b). Consequently, one who occasionally furnishes equipment for interstate transportation does not come within the Act. It cannot be said that if permits are granted in these cases, they must be granted in every instance where on July 1, 1935, a person or corporation permitted his or its trucks to be used in interstate hauling. The person permitting his trucks to be used must have been engaged in the transportation business as a regular occupation or business. In these cases there

is no question but that complainants qualify in this regard.

“The defendants contend that the purpose of the ‘grandfather clause’ in the Motor Carrier Act was to allow only those carriers who had been dealing with **shippers directly** on July 1, 1935, to continue their operations without a determination of convenience and necessity. The Act itself refutes this argument, in that it recognizes that persons often act as brokers of motor transportation, and requires that such persons take out brokers’ licenses. Although these persons deal directly with the shippers, they are not required to obtain common or contract carriers’ licenses; on the contrary, the Act provides that the persons to whom the brokers turn over their business must have a carrier’s license.

“Section 303 (18), U. S. C. A. 49, provides:

“‘The term “broker” means any person not included in the term “motor carrier” and not a bona fide employee or agent of any such carrier, who or which, as principal or agent, sells or offers for sale any transportation subject to this chapter, or negotiates for, or holds himself or itself out by solicitation, advertisement, or otherwise as one who sells, provides, furnishes, contracts, or arranges for such transportation.’

“Section 311 (b) provides for the issuance of licenses to brokers upon qualifying under the Act.

“In thus recognizing that common and contract carriers need not contract directly with the shipping public, but that such contracts may be made through third persons, such as brokers, Congress has shown a clear intention that licensing of carriers should not be affected by the fact that dealings were not had directly with shippers. Nothing in the statute indicates that a carrier must deal directly with the shipper in order to be entitled to a license under the Act.

“In *United States v. Brooklyn Eastern Terminal*,

249 U. S. 396, it was held that the Terminal was a carrier though not organized or held out as such, and though it had not filed tariffs nor undertaken to transport property for all who applied, but merely carried freight as agent for certain railroads with which it had made special contracts. See, also, *United States v. California*, 297 U. S. 175; *Union Stock Yard and Transit Co. v. United States*, 308 U. S. 213, l. c. 220. It was not the method of fixing charges, nor the parties with which complainants contracted, but what they did, that characterized their undertaking.

“The complainants transported freight in interstate commerce for compensation under agreements with common carriers. They actually engaged in the business of transportation. In so doing they provided the trucks and drivers, paid the license fees for using the highways, and assumed the responsibility for loss or damage to freight entrusted to them. This obligation they discharged both by carrying insurance and by payment of losses. The trucks were not used exclusively by any one common carrier, but by several. Even when called by one carrier, on some occasions the use of the trucks on the particular trip was not limited to the service of that carrier, but the freight of other carriers was transported in the same truck at the same time. These facts show that the control of the equipment was in the hands of complainants, and not in the hands of the common carriers.

“Complainants were, under the evidence, contract carriers on July 1, 1935, and have so operated since that time. Their status has not been changed by the subsequent extension of their business, as the statute does not restrict the right of the carrier to add to his or its equipment and facilities over the routes, between the termini or within the territory specified in the permit, as the development of the business and the demands of the public shall require. See, 309 (b).

“The statute says if they transport freight under special agreements ‘directly or by a lease or any other

arrangement' for compensation, they are contract carriers. This language is broad. Congress purposely so provided. It may be that the administrative process would be simpler had the statute been made to read otherwise. It might have been better to further limit the number of motor carriers, but this is not for the Court to say. Congress enacted the statute; it means what it says."

While we do not regard the interpretation to be placed on the statute as a question here for judgment, we believe this language of the district court is a full and complete answer to and refutation of the unsound doctrine advanced by appellants in contravention of the expressed will and purpose of Congress.

Appellants argue that since the re-enactment of the pertinent parts of the act in 1940 left them substantially intact, there is a presumption of congressional approval of the administrative rule. In this they refer to the rule adopted in *Dixie-Ohio Exp. Co.*, 17 M. C. C. 735, that the carrier who actually operated the equipment on which the transportation was performed is entitled to the permit. With this rule we have no quarrel. We insist, in fact, that this is and should be the rule. Commissioner Lee's dissent in this case cites that rule as controlling. But there is not to be found in the *Dixie-Ohio* ruling any intimation of the revolutionary theory now advanced that the real operator who performs the interstate operation is only an appendage of the shipper or broker who arranged for the service, and whose "grandfather" rights are superior to the claim of the real carrier. The view now advanced by appellants is a departure from and in contradiction of the *Dixie-Ohio* rule that the person who transports the freight is invested with "grandfather" rights.

In this connection it is interesting and surprising to find that appellants' brief cites (pp. 18, 25) the actions of the

Commission in denying common carrier rights to Ray C. Kline¹⁵ and J. T. O'Malley¹⁶ in circumstances practically identical with those here revealed. Those rulings do not support appellants' argument here, but contradict it. They follow the principle of the Dixie-Ohio rule, while the present order does not.

In each of those cases the applicant claimed rights as a common carrier. In each the applicant had operated precisely as the common carriers operated in the cases now at bar, as shown by the Commission's findings. In each case the actual transportation of the freight was by the truck owners who operated exactly as did Rosenblum and Margolies. In each case the Commission concluded, correctly, we believe, that the truck owners, who actually carried the freight across the state line, were the carriers, and denied the applications of the common carriers.

Compare the Commission's statements of the facts in those cases, *infra*¹⁷, with the facts in the present record.

¹⁵ 26 M. C. C. 741-746.

¹⁶ 38 Fed. Supp. 1-4.

¹⁷ As to O'Malley (38 Fed. Supp. 1, c. 2), the Commission found:

"That the plaintiff commenced operations in August, 1932, selling and providing transportation to shippers; that, except for the period from October 21, 1935, to October 11, 1937, he has had no line-haul motor equipment, but has used carriers to perform the transportation which he has contracted for; that his present operations do not differ substantially from those which he was conducting on June 1, 1935; that he has contracts with shippers to transport commodities for them at specified rates; that he also renders transportation service to shippers with whom he has no contracts; that for carrying out his undertakings he uses motor contract carriers operating between St. Paul and Fargo and between Minneapolis and Superior, which carriers, he claims, operate under his control; that these carriers maintain their own liability and property damage insurance, procure their licenses, employ their drivers, and operate their trucks in their own names; that the plaintiff has paid pilferage and damage claims to shippers, under an arrangement whereby the carriers are required to reimburse him; that these carriers bear the expense of any damage to their trucks and 'are considered' by plaintiff not to be his employees, but to be independent contractors; that they operate under oral agreements with him, which provide that they will move freight whenever he has any to move; that under these agreements between the plaintiff and the carriers, they are not required to handle freight unless they choose to do so, and can

In the O'Malley and Kline cases the evidence used as the basis of a conclusion the common carriers **were not in control** of the equipment is identical with that in the Rosenblum and Margolies cases, which the Commission finds leads to the conclusion that the common carriers **were in control** of the equipment. Thus identical primary facts are said in one case to prove one thing, and in another case to prove the exact reverse.

We believe the finding in this case is purely arbitrary and capricious and without any support in the record, because clearly contradictory of the evidentiary and primary facts.

Appellants, referring to the Kline case (Brief, p. 18), say:

"In one case recently decided by the Commission the evidence disclosed that on the grandfather date the applicant for a common carrier certificate was employing the services and equipment of eighty-three owner-operators and that some of the owner-operators had applied for operating authority covering the ~~same~~ service as that claimed by the applicant. Kline, 26 M. C. C. 741. A rule which would require the Commission to treat every owner-operator hauling for other carriers on July 1, 1935, as being a carrier within the

withdraw from the agreements at will; that the relationship between the plaintiff and the carriers that he uses to transport freight from the Twin Cities to Fargo and Superior is the same as his relationship with the rail and motor carriers which he uses to transport freight to Chicago, except that he claims that the former operate exclusively for him; that the plaintiff 'allegedly' has charge of the billing of freight and the dispatching of the trucks, and that he has directed the drivers when to go, when to return, and where to deliver, and has paid the cargo insurance."

As to Kline (26 M. C. C., l. c. 743), the Commission found:

"Applicant testified that he solicited traffic from shippers in his own name; that bills of lading were issued or signed in his name, and sometimes signed in the name of the driver only; that transportation charges were collected by him, or, when collected by the drivers, remitted to him; that transportation was conducted under State permits held by him; that the routes were sometimes designated by him, although they were the natural and usual routes to be used; and that he obtained 'trip transit' cargo insurance for each movement, and also carried property-damage and public-liability insurance."

meaning of the Act would result in such wholesale distribution of permits as to defeat the very purpose of federal regulation."

The frailty of this argument is made apparent by the Kline opinion, which reveals that the Commission in that case decided that those "owner-operators hauling for other carriers on July 1, 1935," are the true carriers within the meaning of the act. Apparently the Commission did not agree with appellants that this "would result in such wholesale distribution of permits as to defeat the very purpose of federal regulation."

Compare, also, Columbia Term. Co., 18 M. C. C. 662 et seq., in which the operation was on principle identical with those of Rosenblum and Margolies. The truck owner hauled for railroads who were common carriers. The Commission found the primary facts of that case, *infra*¹⁸,

¹⁸ The Commission there found (l. c. 665):

"* * * applicant owns and maintains the equipment, furnishing garage facilities, gasoline, oil, repairs and accessories required for operation. As of July 1, 1935, applicant had 212 trucks, 6 tractors and 10 semi-trailers in use in this department. In the contract service department applicant employs the driver of the vehicle. The vehicle is driven to shipper's place of business and remains on duty the entire day, excepting Sundays and legal holidays. The vehicle is kept in applicant's garage when it is not in use. The agreement provides that the vehicle shall be operated within a specified number of miles from the shipper's warehouse. Charges, based upon the number of miles the truck is operated daily, are collected by applicant each month. Applicant assumes responsibility for damage to property and personal-injury claims arising from or growing out of the use of the vehicle, and maintains insurance covering same. The testimony establishes that applicant's so-called contract service does not differ in principle from the service usually afforded by a contract carrier operating equipment and transporting specific commodities for particular shippers over irregular routes. The use of the vehicle in serving the shipper to the exclusion of all other shippers does not have the effect of converting the operation of applicant into one of private carriage by the shipper.

"At times applicant has canceled agreements for the use of equipment with driver where the shipper continuously overloaded the truck, thus indicating some further measure of retention of supervision and control. The application, as filed, indicates that applicant considers itself a contract carrier by motor vehicle with respect to the service of this department of its organization. Applicant concedes that where it furnishes both the driver and the truck the operation of the truck is under its direction and control and that its

to be identical with those here found, but to prove the truck owner and not the common carriers was in control of the equipment and consequently was entitled to the permit.

Thus, again, applying the rule that the actual operator of the equipment is the carrier entitled to rights, the Commission has found that primary facts identical with those shown by this record lead to a conclusion exactly opposite to that reached here.

The factual conclusion in the O'Malley, Kline and Columbia Terminals cases are the logical result of the evidentiary facts. And when those same evidentiary facts are used in this case to reach a conclusion exactly contrary, such conclusion is arbitrary and capricious and cannot rationally be held to be supported by the evidence relied on for that purpose.

Conclusion.

The rights of appellants cannot be made to depend on the rights or the conduct of others, nor upon any condition other than that prescribed by Congress.

The holding of the district court there is no evidence to support the factual conclusion on which the Commission's order is based is clearly right and should be affirmed.

J. C. HOPEWELL,

M. E. ARONOFF,

GUS O. NATIONS,

Solicitors for Appellees.

status as to such operation is that of a contract carrier by motor vehicle.

"* * * The evidence indicates that on July 1, 1935, applicant was, and continuously since has been, engaged in transportation as a contract carrier by motor vehicle, in interstate or foreign commerce, of general commodities, limited to a service in which applicant leases trucks with drivers to shippers for the transportation of such shippers' property within the territory described in the findings herein."

SUPREME COURT OF THE UNITED STATES.

Nos. 52 and 53.—OCTOBER TERM, 1941.

The United States of America and In-
terstate Commerce Commission, Ap-
pellants,

52

vs.

N. E. Rosenblum Truck Lines, Inc.

The United States of America and In-
terstate Commerce Commission, Ap-
pellants,

53

vs.

J. B. Margolies, an Individual Doing
Business as Manhattan Truck Lines.

Appeals from the District
Court of the United
States for the Eastern
District of Missouri.

[January 19, 1942.]

Mr. Justice MURPHY delivered the opinion of the Court.

These are direct appeals by the United States and the Interstate Commerce Commission from final decrees of a specially constituted three-judge district court,¹ which sustained appellees' separate petitions to annul, set aside and enjoin an order of the Commission entered July 1, 1940, denying appellees' separate applications under the so-called "grandfather clause" of Section 209(a) of the Motor Carrier Act of 1935² (49 Stat. 543, 552, 49 U. S. C. sec. 309 (a)), for a permit authorizing operations as a contract carrier by motor vehicle.

The evidentiary facts are not seriously disputed. Prior to the critical date, July 1, 1935, and until February 1936, appellees and

¹ Convened pursuant to the Urgent Deficiencies Act of 1913 (38 Stat. 220, 28 U. S. C. secs. 47 and 47(a)) and Section 205(h) of the Motor Carrier Act of 1935, rearranged by the Transportation Act of 1940, 54 Stat. 860, as Section 205(g) of Part II of the Interstate Commerce Act.

² The Motor Carrier Act of 1935 is now designated as Part II of the Interstate Commerce Act. 54 Stat. 919.

their predecessors in interest³ hauled only for common carriers by motor vehicle, and in each case principally for a single common carrier, between St. Louis and Chicago for which they were paid a lump sum on dock to dock movements. Appellees protected their equipment by carrying fire, theft and collision insurance in their own names. They also paid the operating and maintenance costs. Cargo, public-liability, property-damage, and similar types of insurance for the protection of the general and the shipping public were taken out by the common carriers and in some instances charged to the appellees. They occasionally paid small cargo damage claims not covered by insurance. The drivers of appellees' trucks were their employees. The specificity with which the common carriers directed the routes to be followed is in some doubt but the drivers were requested to "sign in" at certain registration stations enroute.

The greater portion of the traffic of the common carriers which appellees served was carried in the carriers' own vehicles. Appellees' equipment was secured on oral arrangements to handle overflow freight. The freight so handled was always solicited by the common carrier, accumulated at its terminal, loaded and unloaded by its employees, and moved from consignor to consignee on that carrier's way bills. The record is silent as to whether appellees' trucks bore the name of the common carrier on whose behalf they were operated.

After February 1936 appellees ceased hauling for common carriers by motor vehicle and began hauling for individual shippers in their own right.

The Commission found that appellees' equipment prior to February 1936 "was operated solely under the direction and control of the common carriers and under the latter's responsibility to the general public and the shippers" and concluded that "as to such operations applicants (appellees) do not qualify as carriers by motor vehicle within the meaning of the Act and are consequently not entitled to a certificate or a permit under the 'grandfather' clause of Section 206(a) or 209(a) thereof."⁴

³ In both of these cases it was the appellee's predecessor in interest who was operating on July 1, 1935. The predecessor of appellee in No. 52 was Rosenblum the individual, and the predecessor of appellee in No. 53 was an individual, Baños.

⁴ 24 M. C. C. 121.

The court below set aside the Commission's order, concluding that appellees were in "bona fide operation as (a) contract carrier(s) in interstate commerce on July 1, 1935" and "in so operating assumed control, management and responsibility for the hauling of cargo" and that "there is no substantial evidence in the record to support the order entered".⁵

The point of divergence between the Commission and the court below seems to have been whether the evidentiary facts supported the Commission's ultimate conclusion that appellees operated solely under the control of the common carriers. Because of our views as to the proper construction of the Act, we need not determine whether substantial evidence supports that conclusion of the Commission. In any event the evidence clearly shows that on the critical date, and from then until February 1936, appellees helped the common carriers move their overflow freight and, as to each job, were an integral part of a single common carrier service offered to the public by the common carrier for whom they hauled.

The question here, as in any problem of statutory construction, is the intention of the enacting body. Congress has set that forth for us broadly in the declaration of policy⁶—in essence it is the regulation of transportation by motor carriers in the public interest so as to achieve adequate, efficient and economical service. To implement that policy Congress forbade common carriers by motor vehicle to operate in interstate commerce without securing a certificate of public convenience and necessity from the Commission,⁷ and required contract carriers to secure a permit from that body.⁸ Those carriers engaged in either of such operations on the respective critical dates and continuously thereafter were to be given the requisite certificate or permit as of right under the "grandfather" provisos of Sections 206(a) and 209(a). We think it clear that Congress did not intend to grant multiple "grandfather" rights on the basis of a single transportation service. Presumably the common carriers which appellees served were entitled to common carrier "grandfather" rights over the entire line. It was the common carriers who offered the complete transportation service to the general public and the shipper. To hold that appellees, who performed part of that complete transportation service for those common carriers under

⁵ 36 F. Supp. 467.

⁶ Section 202(a), 49 U. S. C. sec. 302(a).

⁷ Section 206(a), 49 U. S. C. sec. 306(a).

⁸ Section 209(a), 49 U. S. C. sec. 309(a).

agreements with them, acquired contract carrier "grandfather" rights over the same line entitling them also to serve the public is to ascribe to Congress an intent incompatible with its purpose of regulation. The result would be to create in this case two services offering transportation to the public when there had been only one on the "grandfather" date, without allowing the Commission to determine if the additional service was in the public interest. And, instances can readily be imagined where a single common carrier might utilize the services of several operators such as appellees. Automatically to grant contract carrier rights to such operators might result in such a wholesale distribution of permits as would defeat the very purpose of federal regulation.

Also indicative of the Congressional intent not to confer contract carrier "grandfather" rights on operators, such as appellees, who, on the critical date, were not serving the public directly but were instruments performing part of a common carrier service, is the fact that there would seem to be no reason to apply to them the regulatory provisions of the Act generally applicable to contract carriers, such as the requirement that they should secure a permit only after a showing that their operations are "consistent with the public interest" (Section 209(b)), or that they should file schedules of their minimum rates (Section 218(a)), or that the Commission should prescribe the minimum rates (Section 218(b)). The Act clearly contemplates that contract and common carriers will offer competing types of service for Section 210 prohibits any person from simultaneously holding a certificate and a permit for the same route or territory unless the Commission finds that such is in the public interest, and Section 218(b) enjoins the Commission, in prescribing minimum rates for contract carriers, to "give no advantage or preference to any such carrier in competition with any common carrier by motor vehicle subject to this part". The declaration of policy in Section 202(a) which stresses the avoidance of destructive and unfair competition is referred to in the sections dealing with contract carriers.⁹

⁹ Section 209(b), 49 U. S. C. sec. 309(b). Section 218(b), 49 U. S. C. sec. 318(b).

The Commission has taken the position that while there may be destructive or unfair competition with common carriers when truck operators contract to do work in connection with transportation for common carriers which serve shippers directly, "it is not the truck operator who carries it on. Rather it is the carrier for whom he works, . . ." *Scott Bros. Inc.*, 4 M. C. C. 551, 559.

Appellees' contention that their activities on the critical date fall within the literal language of the definition of "contract carrier" in force on the date of the order¹⁰ and that they are therefore entitled to contract carrier "grandfather" rights is without merit. A holding that the activities of appellees prior to February 1936 were those of contract carriers would not accord with the intent of Congress. Where the plain meaning of words used in a statute produces an unreasonable result, "plainly at variance with the policy of the legislation as a whole", we may follow the purpose of the statute rather than the literal words. *United States v. American Trucking Associations*, 310 U. S. 534, 543, and cases cited. We conclude that the Commission rightly determined that appellees were not contract carriers within the meaning of the Act prior to February 1936.

Appellees make no contention that they were common carriers during the period in question and we are clear that they were not, for the Congressional intent to avoid multiple "grandfather" rights on the basis of a single transportation service is equally applicable to prevent appellees from being considered either as contract or as common carriers within the meaning of the Act. The reasonableness of this interpretation of the Act is apparent. Since appellees' operations, namely, serving the common carriers, on the critical date did not make them "carriers" within the meaning of the Act, and thus subject to regulation under it, it follows that they are free to engage in such operations without securing the authorization of the Commission.¹¹ But those operations cannot be the basis for appellees' automatically securing permits to serve the public in their own right, a service which they were not performing on the "grandfather" date.

The fact that carriers within the meaning of the Act need not deal directly with the public but may act through brokers¹² in no wise affects our conclusion. As we have seen, Congress did not in-

¹⁰ Sec. 203(a) (15). The term "contract carrier by motor vehicle" means any person, not included under paragraph (14) of this section, who or which, under special and individual contracts or agreements, and whether directly or by a lease or any other arrangement, transports passengers or property in interstate or foreign commerce by motor vehicle for compensation. (The Transportation Act of 1940, 54 Stat. 899, amended this definition.)

¹¹ The Commission has so held. *Dixon*, 21 M. C. C. 617; *Smythe*, 22 M. C. C. 726.

¹² Section 203(18), 49 U. S. C. sec. 303(18), defines "broker" substantially as one who sells or offers for sale any transportation. Section 211(a), 49 U. S. C. sec. 311(a), requires that brokers be licensed and that the carriers they employ have either a certificate or a permit issued under the Act.

tend to confer multiple "grandfather" rights on the basis of a single transportation service to the public. That difficulty arises only when an operator undertakes to serve a carrier who is serving the public. It is not present when a carrier deals through a broker.

Reversed.

Mr Justice ROBERTS took no part in the consideration or decision of these cases.

A true copy.

Test:

Clerk, Supreme Court, U. S.

